85
58720
(14)
363 pp

No. 06-939

Supreme Court, U.S.
FILED
JAN 9 - 2008
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, *ET AL.*,

Petitioners,

v.

EDMUND G. BROWN, JR., *ET AL.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

EDMUND G. BROWN, JR.
Attorney General of the State of California
ANGELA SIERRA
Supervising Deputy Attorney General
(Counsel of Record)
300 South Spring Street
Los Angeles, CA 90013
(213) 620-6312
Counsel for Respondents Edmund G. Brown, Jr., et al.

WILLIS J. GOLDSMITH
(Counsel of Record)
JONES DAY
222 East 41st Street
New York, NY 10017
(212) 326-3649
Counsel for Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

Petition for Certiorari Filed January 5, 2007
Petition for Certiorari Granted November 20, 2007

JANET GAARD
Acting Chief Assistant
Attorney General
MANUEL M. MEDEIROS
State Solicitor General
LOUIS VERDUGO, JR.
Senior Assistant Attorney
General
GORDON BURNS
Deputy Solicitor General
RICHARD T. WALDOW
Supervising Deputy
Attorney General
300 South Spring Street
Los Angeles, CA 90013
(213) 620-6312
Counsel for Respondents
Edmund G. Brown, Jr.,
et al.

STEPHEN P. BERZON
SCOTT A. KRONLAND
(*Counsel of Record*)
STACEY M. LEYTON
ALTSHULER BERZON LLP
177 Post Street, Ste. 300
San Francisco, CA 94108
(415) 421-7151
Counsel for Respondents
American Federation of
Labor and Congress of
Industrial Organizations
and California Labor
Federation

MICHAEL A. CARVIN
NOEL J. FRANCISCO
LUKE A. SOBOTA
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
Counsel for Petitioners

ROBIN S. CONRAD
SHANE BRENNAN
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337
Of Counsel for Petitioners

STEVEN J. LAW
STEPHEN A. BOKAT
OFFICE OF CHIEF LEGAL
OFFICER AND GENERAL
COUNSEL, U.S. CHAMBER OF
COMMERCE
1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5576
Of Counsel for Petitioners

BRADLEY W. KAMPAS
SCOTT OBORNE
JACKSON LEWIS LLP
199 Fremont Street
10th Floor
San Francisco, CA 94105
(415) 394-9400
Of Counsel for Petitioners

CONTENTS

Docket Sheet, Case No. 03-55166 in the United States Court of Appeals for the Ninth Circuit 1

Docket Sheet, Case No. 03-55169 in the United States Court of Appeals for the Ninth Circuit 24

Docket Sheet, Case No. CV-02-00377-GLT in the United States District Court for the Central District of California, Southern Division 48

District Court Docket Entry 1, Complaint, filed 4/11/2002 94

District Court Docket Entry 30, Declaration of Nancy Armentrout in Support of Plaintiffs' Motion for Summary Judgment and Exhibits, filed 5/24/2002 128

District Court Docket Entry 32, Declaration of Ronald S. Cohen in Support of Motion for Summary Judgment, filed 5/24/2002 152

District Court Docket Entry 34, Declaration of Stephen Highland in Support of Plaintiffs' Motion for Summary Judgment, filed 5/24/2002 155

District Court Docket Entry 41, Declaration of Mort Swales in Support of Plaintiffs' Motion for Summary Judgment, filed 5/24/2002 160

CONTENTS
(continued)

Page

District Court Docket Entry 43, Declaration of Daniel Zilafro in Support of Plaintiffs' Motion for Summary Judgment, filed 5/24/2002 165

District Court Docket Entry 75, Exhibits to Declaration of Mark A. Johnson in Support of Plaintiffs' Request for Judicial Notice, filed 6/28/2002 170

District Court Docket Entry 76, Exhibits to Declaration of Nancy Armentrout in Support of Plaintiffs' Request for Judicial Notice, filed 6/28/2002 237

District Court Docket Entry 96, Declaration of Gene Morrow in Support of Defendants' Motion for Summary Judgment, and Exhibits, filed 8/05/2002 243

District Court Docket Entry 97, Declaration of Frank Vanacore in Support of Defendants' Motion for Summary Judgment, and Exhibits, filed 8/05/2002 258

District Court Docket Entry 107, Declaration of Frank Azcarte in Opposition to Plaintiffs' Motion for Summary Judgment, and Exhibits, filed 8/19/2002 272

CONTENTS
(continued)

Page

District Court Docket Entry 110, Declaration of Nicholas Ross in Opposition to Plaintiffs' Motion for Summary Judgment, and Exhibits, filed 8/19/2002 280

District Court Docket Entry 118, Declaration of Darryl Nixon, filed 8/19/2002 298

District Court Docket Entry 119, Exhibits to Declaration of Bradley W. Kampas in Opposition to Defendants' and Intervenors' Motion for Summary Judgment, filed 8/19/2002..... 303

District Court Docket Entry 126, Intervenors' Reply Memorandum in Support of Motion for Summary Judgment, filed 8/30/2002..... 322

District Court Docket Entry 130, Defendants' Memorandum of Points and Authorities in Reply to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, filed 8/30/2002 330

District Court Docket Entry N/A, [Proposed] Statement of Uncontroverted Facts and Conclusions of Law in Support of Plaintiffs' Motion for Summary Judgment, placed in file, not used, 9/25/2002 337

District Court Docket Entry 166, Judgment and Order, filed 1/03/2003 348

General Docket
U.S. Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 03-55166

CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*
Plaintiffs– Appellees

v.

BILL LOCKYER, Attorney General, *et al.*
Defendants

1/28/03	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): N. setting schedule as follows: Fee payment is due 2/11/03 ; appellant's designation of RT is due 1/17/03, ; appellee's designation of RT is due 1/27/03,, ; appellant shall order transcript by 2/6/03, ; court reporter shall file transcript in DC by 3/10/03; certificate of record shall be filed by 3/17/03 ; appellant's opening brief is due 4/25/03, ; appellees' brief is due 5/27/03,, ; appellants' reply brief is due 6/9/03, ; [03-55166] (pg) [03-55166]
1/28/03	Filed representation statement by Scott A. Kronland for Intervenors-Appellants served on 01/6/03 attached to NOA (CASEFILE) [03-55166] (pg) [03-55166]
1/28/03	Filed Scott A. Kronland for Appellant CA Labor Federation, Appellant AFL-CIO &

	Wholesale Civil Appeals Docketing Statement served on 1/6/03 (to CONFATT) [03-55166] [03-55166] (pg) [03-55166]
2/5/03	Received notification from District Court re payment of docket fee. (Date: pd: 2/4/03) [03-55166] (lu) [03-55166]
2/12/03	Filed Appellants in 03-55169 mtn to stay judgment of the District Court, to consolidate appeals 03-55169 and 03-55166, to exp briefing and oral argument served on 2/11/03 MOATT. [03-55169, 03-55166] (kkw) [03-55166 03-55169]
2/12/03	Case rejected from Circuit Mediation Program. (sa) [02-17161 02-17351 02-17508 02-57002 02-57052 02-57092 02-57146 02-57166 03-15032 03-15041 03-15087 03-15192 03-35023 03-55012 03-55056 03-55147 03-55166 03-55169 03-55232]
2/14/03	Filed aplts mtn for joinder to stay judgment, to consolidate appeals, & to expedite brfg & oral argument & declaration in support of; served on 2/14/03 (MOATT) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
2/14/03	Received Appellant American Federation of Labor & Congress of Industrial Organizations dated 2/13/03 re: req their name be corrected. [03-55166] (mhf) [03-55166]

3/4/03	Filed Aplt's reply to aples' opposition to stay, consolidate & expedite brfg & oral argument; served on 3/4/03 (Aple's opposition not recd yet) (MOATT) [03-55166] (mhf) [03-55166]
3/13/03	Filed order (Robert R. BEEZER, M. M. McKEOWN,): (MOATT) APLTS' MTNS: to consolidate 03-55166 with 03-55169 is GRANTED, to stay dc judgment is DENIED, to expedite these appeals is GRANTED. The opn br is due 4/16/03; the answ br is due 5/16/03 & the opt rpy br is due w/in 14 days from svc of the answ brs. The clk shall place these consolidated appeals on the next available calendar aft completion of brfg. [03-55166, 03-55169] (mhf) [03-55166 03-55169]
4/8/03	Rec'd notice of correct mailing address from Suzanne M. Ambrose for Bill Lockyer, et al dated 4/7/03 (Chg to: Supervising Deputy Atty Gen, Office of the Atty Gen, 1300 "I" Street, 9th Fl, Sacramento, CA 95814, phoe 916/324-0244, fax 916/327-8192) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
4/16/03	Filed original and 15 copies Aplts AFL-CIO's opening brief (Informal: NO) 48 pages and five excerpts of record in 1volumes; served on 4/15/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]
4/16/03	Received Appellant Bill Lockyer in 03-

55169's brief in 15 copies 24 pages (Informal: NO) & 5 copies of Excs in 1 vol deficient (Missing proof of svc): notified counsel. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/24/03 Received aplt (Bill Lockyer)'s satisfaction of (major) brief deficiency, served on 4/23/03 (Proof of svc of the opn br.) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/24/03 Filed original and 15 copies Appellant Bill Lockyer in 03-55169 opening brief (Informal: NO) 24 pages and five excerpts of record in 1volumes; served on 4/15/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/9/03 Filed aplts' motion to extend time to file reply brief until 6/13/03 [03-55166, 03-55169] served on 5/9/03 [Work in progress per PROMO) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/20/03 Filed order (Deputy Clerk: gss) (PROMO) Aplts' motion for an ext of tm to file the reply br is GRANTED. The optional reply br is due 6/13/03. If aples wish to have an ext of time to file their br, they must file a motion on their behalf. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/21/03 Filed AMENDED order (Deputy Clerk: gss) (PROMO) The order filed 5/20/03 is AMENDED: The answering br is due

5/23/03. The optional reply br is due 6/13/03. All parties are reminded if a party requests for an extension of time to file a br, the moving party can only request for an extension of time to file a br for their own side & must show good cause for the request for the extension. 9th C.R. 31-2.2 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/23/03 Filed original and 15 copies appellee 's 61 pages brief, & 5 copies of Supplemental Excerpts of Record in 3 vols; served on 5/23/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/3/03 Filed aples motion of take judicial notice and deputy clerk order: (Deputy Clerk: tah) Aples' request for judicial notice, any related filings, & any future such requests are referred for disposition to thepanel that considers the merits of the case. (Motion recvd 5/23/03) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/3/03 Received amicus brief of Amicus LPA, Inc & Assoc Builders & Contractors, Inc. in support of Aples; 15 copies of 34 pages; deficient: (Need mtn to file); served on 5/30/03 Notified counsel. [03-55166, 03-55169] response to brief deficiency notice due 6/17/03 in 03-55166, in 03-55169; (mhf) [03-55166 03-55169]

6/3/03 Received amicus Associated Builders & Contractors, Inc's satisfaction of (major)

brief deficiency. (by verification of the parties consent on page 1 of the br) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/3/03 Filed original and 15 copies of Amicus Curiae LPA, Inc & Assoc Builders & Contractors br of 34 pages in support of Aples; served on 5/30/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/5/03 Filed original and 15 copies NLRB brief of 29 pages; served on 6/4/03 (NOTE: National agency- no mtn required) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/12/03 Filed aplts' mtns to ext the time to file the reply brief until 6/20/03 & order: (Deputy Clerk: tah) (PROMO) The mtn is GRANTED. in 03-55166, 03-55169 (Motion recvd 6/6/03) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/17/03 Calendar check performed [03-55166, 03-55169] (mw) [03-55166 03-55169]

6/20/03 Received orig. 15 copies defs/aplts Bill Lockyer et al in 03-55169, reply brief (Informal: no) of 21 pages; served on 6/19/03 deficient no cert of comp. Notified counsel. response to brief deficiency notice due 7/7/03 (dg) [03-55166 03-55169]

6/20/03 Filed aplt's motion to take judicial notice of; served on 6/19/03 [MERITS per promo] [03-55166, 03-55169] (mhf) [03-55166 03-

55169]

6/23/03 Filed aplts' motion to take judicial notice [03-55166, 03-55169] served on 6/20/03 (MERITS per 6/3/03 order) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/23/03 Received original and 15 copies aplts' substitute brief of 37 pages; served on 6/20/03 (Deficient: oversized - recd with mtn to file oversz br) (1 copy of br with mtn to PROMO) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/23/03 Filed Appellants' motion to file oversized brief [03-55166, 03-55169] served on 6/20/03 [Work in progress per PROMO) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/25/03 Received dfdt aplts Bill Lockyer's satisfaction of (major) brief deficiency, served on 6/24/03 (Cert of Compliance) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/25/03 Filed original and 15 copies aplts Bill Lockyer, et al's reply br in 03-55169 (Informal: NO) 21 pages; served on 6/19/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/25/03 Filed Aplts AFL-CIO's response to aples' req for judicial notice; served on 6/20/03 (MERITS) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/27/03 Calendar materials being prepared. [03-

55166, 03-55169] [03-55166, 03-55169] (aw) [03-55166 03-55169]

7/1/03 CALENDARED: PASA Sept 12 2003 900 am Courtroom 3 ** case to be heard 1st on cal ** [03-55166, 03-55169] (aw) [03-55166 03-55169]

7/9/03 Sent document: aplt's mtn to file oversized reply br (filed 6/23/03) w/copy of brief sent to PANEL per request of PROMO [03-55166, 03-55169] (gar) [03-55166 03-55169]

7/14/03 Filed order (Deputy Clerk: hh) Intervenors-appellants' motion for leave to file an oversized reply brief, filed 6/23/03, is GRANTED. [4775262-1] The clerk is instructed to file the reply brief, recvd 6/23/03. [03-55166, 03-55169] (hh) [03-55166 03-55169]

7/14/03 Filed original and 15 copies intvrs-aplts AFL-CIO & Wholesale and CA Labor Federation in 03-55166 reply brief, (Informal: n) 37 pages; served on 6/20/03 (to PANEL) [03-55166, 03-55169] (hh) [03-55166 03-55169]

7/28/03 Filed certificate of record on appeal RT filed in DC : 3/21/03 [03-55166] (pg) [03-55166]

8/26/03 Filed order (Deputy Clerk: hh) Plaintiffs-Aples' request for judicial notice filed 6/3/03 is GRANTED. Defendants-aplts' request for judicial notice, filed 6/20/03 is

GRANTED. Intervenors-aplts' request for judicial notice filed 6/23/03 is GRANTED. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

9/12/03 ARGUED AND SUBMITTED TO Robert R. BEEZER, Raymond C. FISHER, Morrison C. England [03-55166, 03-55169] (rmw) [03-55166 03-55169]

4/20/04 FILED OPINION: AFFIRMED. Each party shall bear its own costs on appeal. (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Robert R. BEEZER; Raymond C. FISHER, author; Morrison C. England.) FILED AND ENTERED JUDGMENT. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/23/04 Filed itv Appellants (AFL-CIO) motion for a 14-day ext of tm to file the pet for rhrg & rhrg en banc; served on 4/23/04 [PANEL] [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/29/04 Filed order (Raymond C. FISHER,): granting intv appellant's mtn for ext of tm to file a pet for rhrg & rhrg enbanc. The pet shall be filed on or bef 5/18/04. (PHONED csl & Faxed to PANEL: 3:42) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/29/04 Filed Appellant Bill Lockyer motion to extend time to file petition for rehearing until 5/18/04 [03-55166, 03-55169] served

on 4/28/04 [Faxed to PANEL] [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/3/04 Filed Aplts (Dept of Health Svcs, Vanacore & Bonta)'s mtn for ext of tm until 5/18/04 to file pet for rhrg & rhrg en banc; served on 4/30/04 (Faxed to PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/6/04 Filed order (Raymond C. FISHER,): granting aplt Dept of Health Services, Vanacore & Bonta's mtn for ext of tm to file the pet for rhrg & suggestion for rhrg enbanc. The pet is due 5/18/04. (PHONED/Faxed to csl/PANEL: 3:26) in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/6/04 Filed order (Raymond C. FISHER,): granting appellant's Cal Atty Gen Bill Lockyer's mtn for an ext of tm to file the pet for rhg & suggestion for rhrg enbanc. The pet is due 5/18/04. (Phoned/Faxed csl/Panel: 3:26) in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/18/04 Filed original and 50 copies Appellant Bill Lockyer in 03-55169 petition for panel rehearing and petition for rehearing en banc 9 p.pages, served on 5/17/04 (PANEL & ALL ACTIVE JUDGES) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/18/04 Filed original and 50 copies Aplts Itvs AFL-CIO & Wholesale, CA Labor

	Federation in 03-55166 petition for panel rehearing and petition for rehearing en banc 18 p.pages, served on 5/18/04 (PANEL & ALL ACTIVE JUDGES) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
6/9/04	Filed order (Robert R. BEEZER, Raymond C. FISHER, Morrison C. England,): Within 21 days from the date of this order, plfts aples are directed to file a resp to the separate pets for rhrg en banc filed on 5/18/04. Fifty copies of the resp shall be filed w/the clk of crt in SF, CA & shall not exceed 15 pgs. [03-55166, 03-55169] (mhf) [03-55166 03-55169]
6/30/04	Received Appellee Chamber of Commerce et al's oversized response to petition for rhearing and rehearing en banc [5065755-1] [5066430-1] served on 6/30/04 [03-55166, 03-55169] PANEL AND ALL ACTIVE JUDGES (gar) [03-55166 03-55169]
7/9/04	Received Intervenors AFL-CIO & California Labor Federation AFL-CIO's reply in support of petition for rehearing and rehearing en banc of 5 pages; served on 7/9/04 (PANEL ONLY) [03-55166, 03-55169] (gva) [03-55166 03-55169]
7/9/04	Filed Intervenor/Aplts AFL-CIO and CA Labor Federation AFL-CIO's motion for leave to file reply in support of petition for rehearing and rehearing en banc; served

	on 7/9/04 (PANEL) [03-55166, 03-55169] (gva) [03-55166 03-55169]
10/12/04	Filed aplt American Federation in 03-55166 additional citations, served on 10/12/04 (PANEL & ALL ACTIVE JUDGES) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
10/22/04	Filed aples' Chamber of Commerce's mtn to strike intervenors' suppl authority; served on 10/22/04 (Copies to PANEL only) (mhf) [03-55166 03-55169]
3/7/05	Received Appellants AFL-CIO's letter dated 3/4/05 re: the status of their mtn for leave to file their reply br in support of the pete for rhrg; (PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
5/13/05	Filed order FOR PUBLICATION (Robert R. BEEZER, Raymond C. FISHER, Morrison C. England,): The petition for panel rehearing is granted, and the case shall be resubmitted as of the date of this order, without additional oral argument. The panel's opinion is withdrawn and shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the panel upon rehearing. (redktd to correct entry) [03-55166, 03-55169] (eu) [03-55166 03-55169]
5/13/05	Case resubmitted on this date to Robert R. BEEZER, Raymond C. FISHER, Morrison C. England. (See 5/13/05 order)

submission.) Order filed: 5/13/05. [03-55166, 03-55169] (eu) [03-55166 03-55169]

5/26/05 Filed Chamber of Commerce et al's additional citations, served on 5/26/05 PANEL [03-55166, 03-55169] (gar) [03-55166 03-55169]

9/6/05 FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Robert R. BEEZER, author; Raymond C. FISHER, dissenting; Morrison C England.) FILED AND ENTERED JUDGMENT. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

9/13/05 Filed order (Robert R. BEEZER,): Each of the parties to this appl is requested to file a br addressing the question of whether this appl should be heard en banc. The br requested shall not exceed 15 pages and may be prepared in letter form. The br requested shall be filed with the clerk of the ct within 21 days from the date of this order. Such filings shall include 50 copies, together with a signed original of the requested br. Amicus br are not invited at this time. [03-55166] (gar) [03-55166]

9/13/05 Filed Appellant CA Labor Federation, Appellant American Federation's motion to extend time to file petition for rehearing until 10/20/05 [03-55166, 03-55169] served on 9/13/05 [5560991]

PANEL [03-55166, 03-55169] (gar) [03-55166 03-55169]

9/16/05 Filed order (Robert R. BEEZER,): A mtn for ext of time to file a pet for rhg en banc was filed 9/13/05. By reason of a sua sponte call for rhrg en banc made by one of the judges of this ct, the mtn for ext of time is moot. This order with w/o prejudice to any further filings by the parties in response to the pending call for reconsideration en banc or for ext of time to make filings beyond the time prescribed by rule. PHONED [5560991-1] [03-55166] (gar) [03-55166]

9/23/05 Filed Appellants CA Labor Federation & AFL's unopposed mtn for ext of tm to file brs regarding whether appeal should be reheard en banc & Declaration in support of; served on 9/23/05 [Faxed to PANEL] [03-55166, 03-55169] (mhf) [03-55166 03-55169]

9/29/05 Filed Appellants Bill Lockyer in 03-55169's joinder to mtn for ext of tm to file brs regarding whether appeal should reheard & declaration in support of; served on 9/28/05 [PANEL] [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/5/05 Filed order (Robert R. BEEZER, Raymond C. FISHER, Morrison C. England,): Aplts' mtn for ext of tm to file Briefs Regarding Whether Appeal Should Be Reheard En Banc filed on 9/23/05 is

GRANTED (Phoned/Faxed: 12:29) in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/12/05 Received Appellant American Federation of Labor & Congress's letter dated 10/10/05 re: sveral clerical errors in the caption on the Opinion filed 9/16/05 (PANEL by FED X) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/25/05 Filed Intervenors Appellants (AFL-CIO & CA Labor Fed)'s response to crt order of 9/13/05 re Whether this case should be reheard en banc; served on 10/25/05 (PANEL & ALL ACTIVE JUDGES ANY INTERESTED SENIOR JUDGE) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/25/05 Filed Appellees (Chamber of Commerce, et al)'s response to crt order of 9/13/05 re Whether the case should be reheard en banc; served on 10/25/05 (PANEL & ALL ACTIVE JUDGES & ANY INTERESTED SENIOR JUDGE) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/26/05 Filed Appellants Bill Lockyer, et al's in response to crt's 9/13/05 as to Whether the appeal should be reheard en banc; served on 10/25/05 (PANEL & ALL ACTIVE JUDGES & ANY INTERESTED SENIOR JUDGE) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

11/2/05 Filed aples' mtn to strike intervenors'

aplts' br in support of en banc review; served on 11/2/05 [PANEL only) (mhf) [03-55166 03-55169]

12/15/05 Filed AFL-CIO, CLF additional citations, FRAP 28(j) letter, served on 12/15/05 (PANEL & ALL ACTIVE & INTERESTED SENIOR JUDGES) [03-55166, 03-55169] (ru) [03-55166 03-55169]

1/17/06 Filed order (Mary M. SCHROEDER,): Upon the vote of a majority of nonrecused regular active judges of this crt, it is ordered that this case be reheard by the en banc court pursuant to Circ Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this crt or any dc of the 9th Cir, except to the extent adopted by the en banc court. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/20/06 Filed order (Mary M. SCHROEDER) The parties shall forward to the clerk of court thirty (30) copies of their original briefs and excerpts of record within 7 days from the date of this order. (phoned/faxed) [03-55166, 03-55169] (gva) [03-55166 03-55169]

1/25/06 Filed order (Mary M. SCHROEDER,): Oral argument shall be reheard en banc in S.F., CA on Tuesday, 3/21/06 at 2:30 p.m. (PHONED/Faxed: 3:08) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/25/06 Filed aples' (FAXED) req for ext of time (1 day) to provide copies of brs & excs of rec

	to enbanc court; [03-55166, 03-55169] served on 1/25/06 [SCHROEDER) (mhf) [03-55166 03-55169]
1/25/06	CALENDARED: SAN FRAN Mar 21 2006 230 pm Courtroom 1 [03-55166, 03-55169] (aw) [03-55166 03-55169]
1/26/06	Recd Aplt Bill Lockyer's opn brs, Jt excs in 2 vols & rpy brs (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
1/26/06	Recd aplts' req for judicial notice originally filed on 6/20/06 (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
1/26/06	Received from intervenor appellants AFL-CIO, California Labor Federation: 30 copies of (1) intervenor-appellant's brief filed 4/16/03; (2) reply brief filed 7/14/03; (3) response to appellees' request for judicial notice filed 6/25/03; (4) intervenor appellant's request for judicial notice filed 6/23/03. (to En Banc Court) [03-55166, 03-55169] (ru) [03-55166 03-55169]
1/26/06	Filed notice of appearance of Angela Siera (Withdrew as counsel: [03-55166, 03-55169] (mhf) [03-55166 03-55169]
1/31/06	Recd aple Chamber of Commerce's Answering br & suppl exc in 3 vols (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
2/2/06	Recd addl copies of Aples' Additional Cites

previously filed on 5/26/06 (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/2/06 Recd addl copies of aples' Req for judicial notice previously recd on 5/23/03 (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/3/06 Received from amicus parties 30 copies of (1) brief of amici curiae LPA, Inc. and Associated Builders filed on 5/3/03 and (2) brief of amicus curiae National Labor Relations Board (NLRB) filed on 6/5/03. (to En Banc Court) [03-55166, 03-55169] (ru) [03-55166 03-55169]

2/6/06 Filed order (Mary M. SCHRODER): Aple Chamber of Commerce's mtn for ext of tm is GRANTED. The Chamber of Commerce's br & excs are ordered filed. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/6/06 Filed Aples Chamber of Commerce, et al's motion to reschedule enbanc oral argument to either 3/22, 23 or 24, 2006; served on 2/6/06 (FAXED to EN BANC PANEL) [5714438] (mhf) [03-55166 03-55169]

2/9/06 Filed order (Mary M. SCHROEDER,): Aple's unopposed mtn to reschedule en banc argument is DENIED because of previous scheduling commitments of the crt. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/9/06	Filed order (Mary M. SCHROEDER,): Upon the vote of a majority of the en banc court, the opinion & dissent filed on 9/6/05, slip op 12167, & appearing at 422 F.3d 973 (9th Cir. 2005), are withdrawn. [03-55166, 03-55169] (mhf) [03-55166 03-55169]
2/23/06	Filed mtn & Declaration by Amicus South Coast Air Quality Management Dist for exemption from Circ Rule 46-5; [03-55166, 03-55169] served on 2/23/06 [5737417] (mhf) [03-55166 03-55169]
2/28/06	Filed Amicus South Coast Air Quality Management District motion to become amicus curiae [03-55166, 03-55169] served on 2/28/06 [EN BANC PANEL) (mhf) [03-55166 03-55169]
2/28/06	Received Amicus South Coast Air Quality Management District's brief in 50 copies of 16 pages; served on 2/28/06; deficient: (Mtn to file pending) (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
3/6/06	Filed order (Mary M. SCHROEDER,): Amicus South Coast Air Quality Management District csl Winter King's mtn for exemption from Circuit Rule 46-5 is GRANTED. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]
3/9/06	Filed order (Mary M. SCHROEDER,): South Cost Air Quality Management

	District's mtn for leave to file br of amicus curiae is GRANTED. (PHONED/FAXED: 9:46) in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]
3/9/06	Filed original and 50 copies South Coast Air Quality's amicus curiae br of 16 pages ;served on 2/28/06 [03-55166, 03-55169] (mhf) [03-55166 03-55169]
3/21/06	Filed Los Angeles Taxi Ind's mtn for lv to file amicus br in support of neither party ; served on 3/20/06 [EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
3/21/06	Received Amicus Los Angeles Taxi Industry in support of neither party's brief in 50 copies of 19 pages; served on 3/20/06; deficient: (mtn to file pending)(Copies to EN BANC PANEL w/mtn) Notified counsel. [03-55166, 03-55169] (mhf) [03-55166 03-55169]
3/21/06	ARGUED AND SUBMITTED TO Mary M. SCHROEDER, Stephen R. REINHARDT, Robert R. BEEZER, Alex KOZINSKI, Andrew J. KLEINFELD, Michael D. HAWKINS, Sidney R. THOMAS, Barry G. SILVERMAN, M. M. McKEOWN, Kim M. WARDLAW, Raymond C. FISHER, Richard A. PAEZ, Johnnie B. RAWLINSON, Richard R. CLIFTON, CONSUELO M. CALLAHAN [03-55166, 03-55169] (ca) [03-55166 03-55169]

4/26/06	Filed aples Chamber of Commerce, et al's additional citations, served on 4/26/06 (EN BANC PANEL by FED X) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
4/26/06	Filed aples Chamber of Commerce's mtn to take judicial notice; served on 4/26/06 [EN BANC PANEL by FED X) (mhf) [03-55166 03-55169]
5/1/06	Filed Intervenor Aplts (CA Labor Federation & American Federation)'s response to notice of supplemental authority & opposition to req for judicial notice; served on 5/1/06 (EN BANC PANEL by FED X) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
5/16/06	Filed order (Mary M. SCHROEDER,): denying appellee's request for judicial notice. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]
9/21/06	FILED OPINION: REVERSED and its injunction is VACATED. We remand for further proceedings consistent with this opinion (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Heard en banc; Mary M. SCHROEDER; Stephen R. REINHARDT; Robert R. BEEZER, dissenting; Alex KOZINSKI; Andrew J. KLEINFELD; Michael D. HAWKINS; Sidney R. THOMAS; Barry G. SILVERMAN; M. M. McKEOWN; Kim M. WARDLAW; Raymond C. FISHER, author; Richard A.

PAEZ; Johnnie B. RAWLINSON; Richard R. CLIFTON; CONSUELO M. CALLAHAN.) FILED AND ENTERED JUDGMENT. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/5/06 Filed Aples' motion to stay the mandate; served on 10/5/06 (PANEL) (gva) [03-55166 03-55169]

10/5/06 Filed Aples' motion to stay issuance of mandate; served on 10/5/06 (MMS) 5970201] (gva) [03-55166 03-55169]

11/20/06 Filed order (Mary M. SCHROEDER, Stephen R. REINHARDT, Robert R. BEEZER, Alex KOZINSKI, Andrew J. KLEINFELD, Michael D. HAWKINS, Sidney R. THOMAS, Barry G. SILVERMAN, M. M. McKEOWN, Kim M. WARDLAW, Raymond C. FISHER, Richard A. PAEZ, Johnnie B. RAWLINSON, Richard R. CLIFTON, CONSUELO M. CALLAHAN,): Aples' mtn to stay the mandate filed 10/6/06 is GRANTED. The mandate is stayed pending the filing of a pet for writ of certiorari in the Supreme Court. The stay expires 90 days from the date of this order unless aples file a pet for the writ & so notify the clerk of court in writing within the period of the stay. In that case, the stay shall continue until final disposition by the Supreme Court. (PHONED/FAXED: 12:01) in 03-55169, 03-55166 [03-55166, 03-55169] (mhf) [03-

55166 03-55169]

12/18/06 Received letter from the Supreme Court dated 12/12/06 re: application for an ext of tm to file a pet for a writ of certiorari has been extended to & including 1/5/07 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/8/07 Rec'd notice of FIRM NAME CHANGE from Scott A. Kronland for Appellants dated 1/5/07. Chg to: ALTSHULER BERZON LLP. The firm's address & telephone & fax numbers remain the same. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/12/07 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-939 filed on 1/5/07. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/16/07 Filed aples' motion for further stay until disposition of their pet for writ of certiorari with the Supreme Court; served on 2/16/07 (MMS) (mhf) [03-55166 03-55169]

11/26/07 Received notice from Supreme Court, petition for certiorari GRANTED on 11/20/07 . Supreme Court No. 06-939 PANEL (gar) [03-55166 03-55169]

General Docket
US Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 03-55169

CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*, Plaintiffs-Appellees,

v.

BILL LOCKYER, Attorney General, *et al.*, Defendants

1/29/03	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): N. setting schedule as follows: appellant's designation of RT is due 1/23/03,, ; appellee's designation of RT is due 2/3/03,, ; appellant shall order transcript by 2/12/03,, ; court reporter shall file transcript in DC by 3/17/03; certificate of record shall be filed by 3/24/03 ; appellant's opening brief is due 5/1/03,, ; appellees' brief is due 6/2/03; appellants' reply brief is due 6/16/03 ; [03-55169] (pg) [03-55169]
1/29/03	Filed representation statement by Suzanne M. Ambrose for Defendants-Appellants served on 01/26/03 (CASEFILE) [03-55169] (pg) [03-55169]
1/29/03	Filed Suzanne M. Ambrose for Appellant Bill Lockyer in 03-55169 Civil Appeals Docketing Statement served on 1/9/03 (to

CONFATT) [03-55169] [03-55169] (pg) [03-55169]

2/12/03 Filed Appellants in 03-55169 mtn to stay judgment of the District Court, to consolidate appeals 03-55169 and 03-55166, to exp briefing and oral argument served on 2/11/03 MOATT. [03-55169, 03-55166] (kkw) [03-55166 03-55169]

2/12/03 Case rejected from Circuit Mediation Program. (sa) [02-17161 02-17351 02-17508 02-57002 02-57052 02-57092 02-57146 02-57166 03-15032 03-15041 03-15087 03-15192 03-35023 03-55012 03-55056 03-55147 03-55166 03-55169 03-55232]

2/14/03 Filed aplts mtn for joinder to stay judgment, to consolidate appeals, & to expedite brfg & oral argument & declaration in support of; served on 2/14/03 (MOATT) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/24/03 Filed Appellees' opposition to Aplts' mtn to stay judgment of the District Court, to consolidate appeals and to expedite briefing and oral argument schedule served on 2/24/03 MOATT. [03-55169] (kkw) [03-55169]

2/28/03 Filed Appellees Corporate Disclosure Statement. Served on 2/28/03 CASEFILE. [03-55169] (kkw) [03-55169]

3/4/03 Filed State Aplts' reply to Aples' opposition to mtn to stay, consolidate appeals and to expedite appeal; served on 3/3/03 MOATT. [03-55169] (kkw) [03-55169]

3/13/03 Filed order (Robert R. BEEZER, M. M. McKEOWN,): (MOATT) APLTS' MTNS: to consolidate 03-55166 with 03-55169 is GRANTED, to stay dc judgment is DENIED, to expedite these appeals is GRANTED. The opn br is due 4/16/03; the answ br is due 5/16/03 & the opt rpy br is due w/in 14 days from svc of the answ brs. The clk shall place these consolidated appeals on the next available calendar aft completion of brfg. [03-55166, 03-55169] (mhf)

[03-55166 03-55169]

4/8/03 Rec'd notice of correct mailing address from Suzanne M. Ambrose for Bill Lockyer, et al dated 4/7/03 (Chg to: Supervising Deputy Atty Gen, Office of the Atty Gen, 1300 "I" Street, 9th Fl, Sacramento, CA 95814, phone 916/324-0244, fax 916/327-8192) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/16/03 Filed original and 15 copies Aplts AFL-CIO's opening brief (Informal: NO) 48 pages and five excerpts of record in 1volumes; served on 4/15/03 [03-55166,

03-55169] (mhf) [03-55166 03-55169]

4/16/03 Received Appellant Bill Lockyer in 03-55169's brief in 15 copies 24 pages (Informal: NO) & 5 copies of Excs in 1 vol deficient (Missing proof of svc): notified counsel. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/24/03 Received aplt (Bill Lockyer)'s satisfaction of (major) brief deficiency, served on 4/23/03 (Proof of svc of the opn br.) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/24/03 Filed original and 15 copies Appellant Bill Lockyer in 03-55169 opening brief (Informal: NO) 24 pages and five excerpts of record in 1volumes; served on 4/15/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/9/03 Filed aples American Federation, et al's motion to extend time to file appellee's brief until 5/23/03; served on 5/9/03 (Work in progress per PROMO) (mhf) [03-55169]

5/9/03 Filed aplts' motion to extend time to file reply brief until 6/13/03 [03-55166, 03-55169] served on 5/9/03 [Work in progress per PROMO) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/20/03 Filed order (Deputy Clerk: gss) (PROMO) Aplts' motion for an ext of tm to file the

reply br is GRANTED. The optional reply br is due 6/13/03. If aples wish to have an ext of time to file their br, they must file a motion on their behalf. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/21/03 Filed AMENDED order (Deputy Clerk: gss) (PROMO) The order filed 5/20/03 is AMENDED: The answering br is due 5/23/03. The optional reply br is due 6/13/03. All parties are reminded if a party requests for an extension of time to file a br, the moving party can only request for an extension of time to file a br for their own side & must show good cause for the request for the extension. 9th C.R. 31-2.2 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/23/03 Filed original and 15 copies appellee 's 61 pages brief, & 5 copies of Supplemental Excerpts of Record in 3 vols; served on 5/23/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/3/03 Filed aples motion of take judicial notice and deputy clerk order: (Deputy Clerk: tah) Aples' request for judicial notice, any related filings, & any future such requests are referred for disposition to the panel that considers the merits of the case. (Motion rcvd 5/23/03) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/3/03 Received amicus brief of Amicus LPA, Inc & Assoc Builders & Contractors, Inc. in support of Aples; 15 copies of 34 pages; deficient: (Need mtn to file); served on 5/30/03 Notified counsel. [03-55166, 03-55169] response to brief deficiency notice due 6/17/03 in 03-55166, in 03-55169; (mhf) [03-55166 03-55169]

6/3/03 Received amicus Associated Builders & Contractors, Inc's satisfaction of (major) brief deficiency. (by verification of the parties consent on page 1 of the br) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/3/03 Filed original and 15 copies of Amicus Curiae LPA, Inc & Assoc Builders & Contractors br of 34 pages in support of Aples; served on 5/30/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/5/03 Received Amicus National Labor Board's brief in support of aples; original & 15 copies of 29 pages; deficient: (Need mtn); served on 6/4/03 Notified counsel. [03-55166, 03-55169] (mhf) [03-55169]

6/5/03 Filed original and 15 copies NLRB brief of 29 pages; served on 6/4/03 (NOTE: National agency- no mtn required) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/12/03 Filed aplts' mtns to ext the time to file the

reply brief until 6/20/03 & order: (Deputy Clerk: tah) (PROMO) The mtn is GRANTED in 03-55166, 03-55169 (Motion recvd 6/6/03) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/17/03 Calendar check performed [03-55166, 03-55169] (mw) [03-55166 03-55169]

6/20/03 Received orig. 15 copies defs/aplts Bill Lockyer et al in 03-55169, reply brief (Informal: no) of 21 pages; served on 6/19/03 deficient no cert of comp. Notified counsel. response to brief deficiency notice due 7/7/03 (dg) [03-55166 03-55169]

6/20/03 Filed aplt's motion to take judicial notice of; served on 6/19/03 [MERITS per promo] [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/23/03 Filed original and 15 copies aplts' Corrected reply br of 37 pages ; served on 6/20/03 [03-55166, 03-55169] (mhf) [03-55169]

6/23/03 Filed aplts' motion to take judicial notice [03-55166, 03-55169] served on 6/20/03 (MERITS per 6/3/03 order) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/23/03 Received original and 15 copies aplts' substitute brief of 37 pages; served on 6/20/03 (Deficient: oversized - recd with mtn to file oversz br) (1 copy of br with mtn to PROMO) [03-55166, 03-55169]

(mhf) [03-55166 03-55169]

6/23/03 Filed Appellants' motion to file oversized brief [03-55166, 03-55169] served on 6/20/03 [Work in progress per PROMO) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/25/03 Received dfdt aplts Bill Lockyer's satisfaction of (major) brief deficiency, served on 6/24/03 (Cert of Compliance) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/25/03 Filed original and 15 copies aplts reply brief, (Informal: NO) 37 pages; served on 6/20/03 [03-55166, 03-55169] (mhf) [03-55169]

6/25/03 Filed original and 15 copies aplts Bill Lockyer, et al's reply br in 03-55169 (Informal: NO) 21 pages; served on 6/19/03 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/25/03 Filed Aplts AFL-CIO's response to aples' req for judicial notice; served on 6/20/03 (MERITS) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

6/27/03 Calendar materials being prepared. [03-55166, 03-55169] [03-55166, 03-55169] (aw) [03-55166 03-55169]

7/1/03 CALENDARED: PASA Sept 12 2003 900

am Courtroom 3 ** case to be heard 1st on cal ** [03-55166, 03-55169] (aw) [03-55166 03-55169]

7/9/03 Sent document: aplt's mtn to file oversized reply br (filed 6/23/03) w/copy of brief sent to PANEL per request of PROMO [03-55166, 03-55169] (gar) [03-55166 03-55169]

7/14/03 Filed order (Deputy Clerk: hh) Intervenors-appellants' motion for leave to file an oversized reply brief, filed 6/23/03, is GRANTED. [4775262-1] The clerk is instructed to file the reply brief, recvd 6/23/03. [03-55166, 03-55169] (hh) [03-55166 03-55169]

7/14/03 Filed original and 15 copies intvrs-aplts AFL-CIO & Wholesale and CA Labor Federation in 03-55166 reply brief, (Informal: n) 37 pages; served on 6/20/03 (to PANEL) [03-55166, 03-55169] (hh) [03-55166 03-55169]

7/28/03 Filed certificate of record on appeal RT filed in DC : 3/21/03 [03-55169] (pg) [03-55169]

8/26/03 Filed order (Deputy Clerk: hh) Plaintiffs-Aples' request for judicial notice filed 6/3/03 is GRANTED. Defendants-aplts' request for judicial notice, filed 6/20/03 is GRANTED. Intervenors-aplts' request for judicial notice filed 6/23/03 is GRANTED.

[03-55166, 03-55169] (mhf) [03-55166 03-55169]

9/12/03 ARGUED AND SUBMITTED TO Robert R. BEEZER, Raymond C. FISHER, Morrison C. England [03-55166, 03-55169] (rmw) [03-55166 03-55169]

4/20/04 FILED OPINION: AFFIRMED. Each party shall bear its own costs on appeal. (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Robert R. BEEZER; Raymond C. FISHER, author; Morrison C. England.) FILED AND ENTERED JUDGMENT. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/23/04 Filed itv Appellants (AFL-CIO) motion for a 14-day ext of tm to file the pet for rhrg & rhrg en banc; served on 4/23/04 [PANEL] [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/29/04 Filed order (Raymond C. FISHER,): granting intv appellant's mtn for ext of tm to file a pet for rhrg & rhrg enbanc. The pet shall be filed on or bef 5/18/04. (PHONED csl & Faxed to PANEL: 3:42) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/29/04 Filed Appellant Bill Lockyer motion to extend time to file petition for rehearing until 5/18/04 [03-55166, 03-55169] served

on 4/28/04 [Faxed to PANEL] [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/3/04 Filed Aplts (Dept of Health Svcs, Vanacore & Bonta)'s mtn for ext of tm until 5/18/04 to file pet for rhrg & rhrg en banc; served on 4/30/04 (Faxed to PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/6/04 Filed order (Raymond C. FISHER,): granting aplt Dept of Health Services, Vanacore & Bonta's mtn for ext of tm to file the pet for rhrg & suggestion for rhrg enbanc. The pet is due 5/18/04. (PHONED/Faxed to csl/PANEL: 3:26) in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/6/04 Filed order (Raymond C. FISHER,): granting appellant's Cal Atty Gen Bill Lockyer's mtn for an ext of tm to file the pet for rhg & suggestion for rhrg enbanc. The pet is due 5/18/04. (Phoned/Faxed csl/Panel: 3:26) in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/18/04 Filed original and 50 copies Appellant Bill Lockyer in 03-55169 petition for panel rehearing and petition for rehearing en banc 9 p.pages, served on 5/17/04 (PANEL & ALL ACTIVE JUDGES) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/18/04	Filed original and 50 copies Aplts Itvs AFL-CIO & Wholesale, CA Labor Federation in 03-55166 petition for panel rehearing and petition for rehearing en banc 18 p.pages, served on 5/18/04 (PANEL & ALL ACTIVE JUDGES) [03-55166, 03-55169] (mhf) [03-55166 03-55169]
6/9/04	Filed order (Robert R. BEEZER, Raymond C. FISHER, Morrison C. England,): Within 21 days from the date of this order, plfts aples are directed to file a resp to the separate pets for rhrg en banc filed on 5/18/04. Fifty copies of the resp shall be filed w/the clk of crt in SF, CA & shall not exceed 15 pgs. [03-55166, 03-55169] (mhf) [03-55166 03-55169]
6/30/04	Received Appellee Chamber of Commerce et al's oversized response to petition for rhearing and rehearing en banc [5065755-1] [5066430-1] served on 6/30/04 [03-55166, 03-55169] PANEL AND ALL ACTIVE JUDGES (gar) [03-55166 03-55169]
7/9/04	Received Intervenors AFL-CIO & California Labor Federation AFL-CIO's reply in support of petition for rehearing and rehearing en banc of 5 pages; served on 7/9/04 (PANEL ONLY) [03-55166, 03-55169] (gva) [03-55166 03-55169]
7/9/04	Filed Intervenor/Aplts AFL-CIO and CA

Labor Federation AFL-CIO's motion for leave to file reply in support of petition for rehearing and rehearing en banc; served on 7/9/04 (PANEL) [03-55166, 03-55169] (gva) [03-55166 03-55169]

10/12/04 Filed aplt American Federation in 03-55166 additional citations, served on 10/12/04 (PANEL & ALL ACTIVE JUDGES) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/22/04 Filed aples' Chamber of Commerce's mtn to strike intervenors' suppl authority; served on 10/22/04 (Copies to PANEL only) (mhf) [03-55166 03-55169]

3/7/05 Received Appellants AFL-CIO's letter dated 3/4/05 re: the status of their mtn for leave to file their reply br in support of the pete for rhrg; (PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/13/05 Filed order FOR PUBLICATION (Robert R. BEEZER, Raymond C. FISHER, Morrison C. England,): The petition for panel rehearing is granted, and the case shall be resubmitted as of the date of this order, without additional oral argument. The panel's opinion is withdrawn and shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the panel upon rehearing. (redktd to correct entry) [03-55166, 03-

55169] (eu) [03-55166 03-55169]

5/13/05 Case resubmitted on this date to Robert R. BEEZER, Raymond C. FISHER, Morrison C. England. (See 5/13/05 order) submission.) Order filed: 5/13/05. [03-55166, 03-55169] (eu) [03-55166 03-55169]

5/26/05 Filed Chamber of Commerce et al's additional citations, served on 5/26/05 PANEL [03-55166, 03-55169] (gar) [03-55166 03-55169]

9/6/05 FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Robert R. BEEZER, author; Raymond C. FISHER, dissenting; Morrison C. England.) FILED AND ENTERED JUDGMENT. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

9/13/05 Filed Appellant CA Labor Federation, Appellant American Federation's motion to extend time to file petition for rehearing until 10/20/05 [03-55166, 03-55169] served on 9/13/05 [5560991] PANEL [03-55166, 03-55169] (gar) [03-55166 03-55169]

9/23/05 Filed Appellants CA Labor Federation & AFL's unopposed mtn for ext of tm to file brs regarding whether appeal should be reheard en banc & Declaration in support of; served on 9/23/05 [Faxed to PANEL]

[03-55166, 03-55169] (mhf) [03-55166 03-55169]

9/29/05 Filed Appellants Bill Lockyer in 03-55169's joinder to mtn for ext of tm to file brs regarding whether appeal should reheard & declaration in support of; served on 9/28/05 [PANEL] [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/5/05 Filed order (Robert R. BEEZER, Raymond C. FISHER, Morrison C. England,): Aplts' mtn for ext of tm to file Briefs Regarding Whether Appeal Should Be Reheard En Banc filed on 9/23/05 is GRANTED (Phoned/Faxed: 12:29) in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/12/05 Received Appellant American Federation of Labor & Congress's letter dated 10/10/05 re: sveral clerical errors in the caption on the Opinion filed 9/16/05 (PANEL by FED X) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/25/05 Filed Intervenors Appellants (AFL-CIO & CA Labor Fed)'s response to crt order of 9/13/05 re Whether this case should be reheard en banc; served on 10/25/05 (PANEL & ALL ACTIVE JUDGES ANY INTERESTED SENIOR JUDGE) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/25/05 Filed Appellees (Chamber of Commerce,

et al)'s response to crt order of 9/13/05 re Whether the case should be reheard en banc; served on 10/25/05 (PANEL & ALL ACTIVE JUDGES & ANY INTERESTED SENIOR JUDGE) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/26/05 Filed Appellants Bill Lockyer, et al's in response to crt's 9/13/05 as to Whether the appeal should be reheard en banc; served on 10/25/05 (PANEL & ALL ACTIVE JUDGES & ANY INTERESTED SENIOR JUDGE) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

11/2/05 Filed aples' mtn to strike intervenors' aplts' br in support of en banc review; served on 11/2/05 [PANEL only) (mhf) [03-55166 03-55169]

12/15/05 Filed AFL-CIO, CLF additional citations, FRAP 28(j) letter, served on 12/15/05 (PANEL & ALL ACTIVE & INTERESTED SENIOR JUDGES) [03-55166, 03-55169] (ru) [03-55166 03-55169]

1/17/06 Filed order (Mary M. SCHROEDER,): Upon the vote of a majority of nonrecused regular active judges of this crt, it is ordered that this case be reheard by the en banc court pursuant to Circ Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this crt or any dc of the 9th Cir, except to the extent adopted by the en banc court. [03-55166,

03-55169] (mhf) [03-55166 03-55169]

1/20/06 Filed order (Mary M. SCHROEDER) The parties shall forward to the clerk of court thirty (30) copies of their original briefs and excerpts of record within 7 days from the date of this order. (phoned/faxed) [03-55166, 03-55169] (gva) [03-55166 03-55169]

1/25/06 Filed order (Mary M. SCHROEDER,): Oral argument shall be reheard en banc in S.F., CA on Tuesday, 3/21/06 at 2:30 p.m. (PHONED/Faxed: 3:08) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/25/06 Filed aples' (FAXED) req for ext of time (1 day) to provide copies of brs & excs of rec to enbanc court; [03-55166, 03-55169] served on 1/25/06 [SCHROEDER) (mhf) [03-55166 03-55169]

1/25/06 CALENDARED: SAN FRAN Mar 21 2006 230 pm Courtroom 1 [03-55166, 03-55169] (aw) [03-55166 03-55169]

1/26/06 Recd Aplt Bill Lockyer's opn brs, Jt excs in 2 vols & rpy brs (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/26/06 Recd aplts' req for judicial notice originally filed on 6/20/06 (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/26/06 Received from intervenor appellants AFL-CIO, California Labor Federation: 30 copies of (1) intervenor-appellant's brief filed 4/16/03; (2) reply brief filed 7/14/03; (3) response to appellees' request for judicial notice filed 6/25/03; (4) intervenor appellant's request for judicial notice filed 6/23/03. (to En Banc Court) [03-55166, 03-55169] (ru) [03-55166 03-55169]

1/26/06 Filed notice of appearance of Angela Siera (Withdrew as counsel: [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/31/06 Recd aple Chamber of Commerce's Answering br & suppl exc in 3 vols (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/2/06 Recd addl copies of Aples' Additional Cites previously filed on 5/26/06 (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/2/06 Recd addl copies of aples' Req for judicial notice previously recd on 5/23/03 (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/3/06 Received from amicus parties 30 copies of (1) brief of amici curiae LPA, Inc. and Associated Builders filed on 6/3/03 and (2) brief of amicus curiae National Labor Relations Board (NLRB) filed on 6/5/03.

(to En Banc Court) [03-55166, 03-55169] (ru) [03-55166 03-55169]

2/6/06 Filed order (Mary M. SCHRODER): Aple Chamber of Commerce's mtn for ext of tm is GRANTED. The Chamber of Commerce's br & excs are ordered filed. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/6/06 Filed Aples Chamber of Commerce, et al's motion to reschedule enbanc oral argument to either 3/22, 23 or 24, 2006; served on 2/6/06 (FAXED to EN BANC PANEL) [5714438] (mhf) [03-55166 03-55169]

2/9/06 Filed order (Mary M. SCHROEDER,): Aple's unopposed mtn to reschedule en banc argument is DENIED because of previous scheduling commitments of the crt. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/9/06 Filed order (Mary M. SCHROEDER,): Upon the vote of a majority of the en banc court, the opinion & dissent filed on 9/6/05, slip op 12167, & appearing at 422 F.3d 973 (9th Cir. 2005), are withdrawn. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/23/06 Filed mtn & Declaration by Amicus South Coast Air Quality Management Dist for exemption from Circ Rule 46-5; [03-55166,

03-55169] served on 2/23/06 [5737417] (mhf) [03-55166 03-55169]

2/28/06 Received Amicus South Coast Air Qual in 03-55166, Amicus South Coast Air Qual in 03-55169's brief in 50 copies of 16 pages; deficient: (Mtn pending); served on 2/28/06 (ENBANC PANEL) [03-55166, 03-55169] (mhf) [03-55169]

2/28/06 Filed Amicus South Coast Air Quality Management District motion to become amicus curiae [03-55166, 03-55169] served on 2/28/06 [EN BANC PANEL) (mhf) [03-55166 03-55169]

2/28/06 Received Amicus South Coast Air Quality Management District's brief in 50 copies of 16 pages; served on 2/28/06; deficient: (Mtn to file pending) (EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

3/6/06 Filed order (Mary M. SCHROEDER,): Amicus South Coast Air Quality Management District csl Winter King's mtn for exemption from Circuit Rule 46-5 is GRANTED. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

3/9/06 Filed order (Mary M. SCHROEDER,): South Cost Air Quality Management District's mtn for leave to file br of amicus curiae is GRANTED. (PHONED/FAXED:

9:46) in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

3/9/06 Filed original and 50 copies South Coast Air Quality's amicus curiae br of 16 pages; served on 2/28/06 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

3/21/06 Filed Los Angeles Taxi Ind's mtn for lv to file amicus br in support of neither party; served on 3/20/06 [EN BANC PANEL) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

3/21/06 Received Amicus Los Angeles Taxi Industry in support of neither party's brief in 50 copies of 19 pages; served on 3/20/06; deficient: (mtn to file pending) (Copies to EN BANC PANEL w/mtn) Notified counsel. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

3/21/06 ARGUED AND SUBMITTED TO Mary M. SCHROEDER, Stephen R. REINHARDT, Robert R. BEEZER, Alex KOZINSKI, Andrew J. KLEINFELD, Michael D. HAWKINS, Sidney R. THOMAS, Barry G. SILVERMAN, M. M. McKEOWN, Kim M. WARDLAW, Raymond C. FISHER, Richard A. PAEZ, Johnnie B. RAWLINSON, Richard R. CLIFTON, CONSUELO M. CALLAHAN [03-55166, 03-55169] (ca) [03-55166 03-55169]

4/26/06 Filed aples Chamber of Commerce, et al's additional citations, served on 4/26/06 (EN BANC PANEL by FED X) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

4/26/06 Filed aples Chamber of Commerce's mtn to take judicial notice; served on 4/26/06 [EN BANC PANEL by FED X) (mhf) [03-55166 03-55169]

5/1/06 Filed Intervenor Aplts (CA Labor Federation & American Federation)'s response to notice of supplemental authority & opposition to req for judicial notice; served on 5/1/06 (EN BANC PANEL by FED X) [03-55166, 03-55169] (mhf) [03-55166 03-55169]

5/16/06 Filed order (Mary M. SCHROEDER,): denying appellee's request for judicial notice. in 03-55166, 03-55169 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

9/21/06 FILED OPINION: REVERSED and its injunction is VACATED. We remand for further proceedings consistent with this opinion (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Heard en banc; Mary M. SCHROEDER; Stephen R. REINHARDT; Robert R. BEEZER, dissenting; Alex KOZINSKI; Andrew J. KLEINFELD; Michael D. HAWKINS; Sidney R. THOMAS; Barry G. SILVERMAN; M. M. McKEOWN; Kim M. WARDLAW;

Raymond C. FISHER, author; Richard A. PAEZ; Johnnie B. RAWLINSON; Richard R. CLIFTON; CONSUELO M. CALLAHAN.) FILED AND ENTERED JUDGMENT. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

10/5/06 Filed Aples' motion to stay the mandate; served on 10/5/06 (PANEL) (gva) [03-55166 03-55169]

10/5/06 Filed Aples' motion to stay issuance of mandate; served on 10/5/06 (MMS) 5970201] (gva) [03-55166 03-55169]

11/20/06 Filed order (Mary M. SCHROEDER, Stephen R. REINHARDT, Robert R. BEEZER, Alex KOZINSKI, Andrew J. KLEINFELD, Michael D. HAWKINS, Sidney R. THOMAS, Barry G. SILVERMAN, M. M. McKEOWN, Kim M. WARDLAW, Raymond C. FISHER, Richard A. PAEZ, Johnnie B. RAWLINSON, Richard R. CLIFTON, CONSUELO M. CALLAHAN,): Aples' mtn to stay the mandate filed 10/6/06 is GRANTED. The mandate is stayed pending the filing of a pet for writ of certiorari in the Supreme Court. The stay expires 90 days from the date of this order unless aples file a pet for the writ & so notify the clerk of court in writing within the period of the stay. In that case, the stay shall continue until final disposition by the Supreme Court.

(PHONED/FAXED: 12:01) in 03-55169, 03-55166 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

12/18/06 Received letter from the Supreme Court dated 12/12/06 re: application for an ext of tm to file a pet for a writ of certiorari has been extended to & including 1/5/07 [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/8/07 Rec'd notice of FIRM NAME CHANGE from Scott A. Kronland for Appellants dated 1/5/07. Chg to: ALTSHULER BERZON LLP. The firm's address & telephone & fax numbers remain the same. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

1/12/07 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-939 filed on 1/5/07. [03-55166, 03-55169] (mhf) [03-55166 03-55169]

2/16/07 Filed aples' motion for further stay until disposition of their pet for writ of certiorari with the Supreme Court; served on 2/16/07 (MMS) (mhf) [03-55166 03-55169]

11/26/07 Received notice from Supreme Court, petition for certiorari GRANTED on 11/20/07 . Supreme Court No. 06-939 PANEL (gar) [03-55166 03-55169]

CHAMBER OF COMMERCE OF THE UNITED STATES, *et. al.*,

Plaintiffs-Appellees,

v.

BILL LOCKYER, in his capacity as Attorney General of the State of California, *et al.*,

Defendants-Appellants,

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, *et al.*,

Intervenors-Appellants.

On Appeal from the United States

District Court for the Central District of California, Southern Division

No. CV-02-00377-GLT

The Hon. Gary L. Taylor, Judge

Date Filed	#	Docket Text

04/11/2002	1	COMPLAINT filed; Summons(es) not issued; referred to Discovery Arthur Nakazato (mg) (Entered: 04/18/2002)
04/11/2002	2	NOTICE OF INTERESTED PARTIES filed by plaintiffs (mg) (Entered: 04/18/2002)
04/11/2002		SUMMONS issued as to defendants on cmp (mg) (Entered: 04/18/2002)
04/11/2002	3	NOTICE by plaintiffs of related case(s) SA CV 00-1190 GLT (ANx) (mg) (Entered: 04/18/2002)
04/11/2002	4	NOTICE of pendency of other actions or proceedings by plaintiffs (mg) (Entered: 04/18/2002)
04/11/2002		NOTICE OF FILING FEE DUE On Pro Hac Vice Application mailed to attorney Stephen A Bokat for plaintiff Chamb of Comm of US (mg) (Entered: 04/18/2002)
04/23/2002	6	APPLICATION AND ORDER of Non-Resident Attorney to Appear in a Specific Case filed for plaintiff Chamb of Comm of US by Stephen A. Bokat Designating Brent J. North as local counsel. Approved by Judge David O. Carter (Fee pd) (rmi) (Entered: 05/01/2002)

04/25/2002	5	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 224 (Related Case) filed. [Related Case no.: SACV 00-1190GLT(ANx)] Case transferred from Judge David O. Carter to Judge Gary L. Taylor for all further proceedings. The case number will now reflect the initials of the transferee Judge [SACV 02 7GLT(ANx)] (cc: all counsel) (csb) (Entered: 04/25/2002)
04/30/2002	7	EX PARTE APPLICATION filed by defendants to extend time an additional 30 days, or soon thereafter as practicable, for filing an answer or other responsive pleading to complaint [1-1] as to defendants (mg) (Entered: 05/06/2002)
04/30/2002	8	PROOF OF SERVICE by defendants on 4/30/02 of Ex Parte Appl & Ord Extending Time to Plead & [Proposed Ord GR Ex Parte Appl for Ord Extending Time to Plead] (mg) (Entered: 05/06/2002)
05/01/2002	9	NOTICE OF MOTION AND MOTION by Intervenors American Fed of Labor & Congress of Industrial Organizations & CA

		Labor Fed for leave to intervene as Dfts ; memo in suppt; motion hearing set for 10:00 6/10/02; Lodged Prop Ord (mg) (Entered: 05/06/2002)
05/01/2002	10	MEMO OF P/A IN OPPOSITION by plaintiffs to Dfts' ex parte application to extend time an additional 30 days, or soon thereafter as practicable, for filing an answer or other responsive pleading to complaint [1-1] as to defendants [7-1] (mg) (Entered: 05/06/2002)
05/02/2002	11	ORDER by Judge Gary L. Taylor GRANTING in part DENYING in part Dfts' ex parte application to extend time to file pleading. Dfts shall have to & incl 5/15/02 to file such pleading (mg) (Entered: 05/07/2002)
05/06/2002	12	SUPPLEMENTAL DECL BY STACEY M LEYTON in suppt of obj to intra-district assignment (mg) (Entered: 05/08/2002)
05/08/2002	13	DECLARATION of Rodney Wilkerson by plaintiff Chamb of Comm of US, plaintiff CA Chamber of Comm, plaintiff Employers Group, plaintiff CA Healthcare Assn, plaintiff CA Mfrs & Tech Assn, plaintiff CA Assn

		Health Fac, plaintiff CA Assn Homes & Svcs, plaintiff Bettec Corporation, plaintiff Marksherm Corp, plaintiff Zilaco Inc, plaintiff Zilaco, plaintiff Del Rio Healthcare, plaintiff Beverly Health & Reh, plaintiff Internext Group in suppt of plfs' opp to appl-in-intervention's obj to intradistrict assignment & req for ruling on whether intradist assignment is proper (rmi) (Entered: 05/10/2002)
05/08/2002	14	SUPPLEMENTAL FILING by interventors, American Fed of Labor of Congress of Indust Organizations & Calif Labor Fed, AFL-CIO re applicatns-in-intervention's obj to intradist assignment (rmi) (Entered: 05/10/2002)
05/08/2002	15	OPPOSITION filed by plaintiff Chamb of Comm of US, plaintiff CA Chamber of Comm, plaintiff Employers Group, plaintiff CA Healthcare Assn, plaintiff CA Mfrs & Tech Assn, plaintiff CA Assn Health Fac, plaintiff CA Assn Homes & Svcs, plaintiff Bettec Corporation, plaintiff Marksherm Corp, plaintiff Zilaco Inc, plaintiff Zilaco, plaintiff Del Rio Healthcare, plaintiff Beverly

		Health & Reh, plaintiff Internext Group to application's obj to intradist assign & req for ruling oh whether intradist assign is proper (rmi) (Entered: 05/10/2002)
05/08/2002	16	DECLARATION of Marisela Arvayo by plaintiff Chamb of Comm of US, plaintiff CA Chamber of Comm, plaintiff Employers Group, plaintiff CA Healthcare Assn, plaintiff CA Mfrs & Tech Assn, plaintiff CA Assn Health Fac, plaintiff CA Assn Homes & Svcs, plaintiff Bettec Corporation, plaintiff Marksherm Corp, plaintiff Zilaco Inc, plaintiff Zilaco, plaintiff Del Rio Healthcare, plaintiff Beverly Health & Reh, plaintiff Internext Group in suppt of plfs' opp to applicants-in-intervention's obj to intradist assign & req for ruling on whether intradist assign is proper (rmi) (Entered: 05/10/2002)
05/09/2002	17	APPLICANTS-IN-INTERVENTION'S RESPONSE to Plfs' opposition to applicants-in-intervention's obj to intradistrict assignment [15-1 (mg) (Entered: 05/13/2002)
05/09/2002	18	SECOND SUPPLEMENTAL DECL by Stacey M Leyton in

		suppt of objection to intra-district assignment (mg) (Entered: 05/13/2002)
05/10/2002	19	MINUTES (In Chambers) by Judge Gary L. Taylor: The Unions' obj to assignment of this case to the Central Dist's Southern Div is OVERRULED. This case was duly assigned by the Clerk to Judge Carter in the Southern Div & duly low-numbered from Judge Carter to Judge Taylor: CR: (not present) (mg) (Entered: 05/14/2002)
05/15/2002	20	NOTICE OF MOTION AND MOTION by defendants to dismiss ; motion hearing set for 10:00 6/17/02 (mg) (Entered: 05/16/2002)
05/15/2002	21	MEMORANDUM OF P/A IN SUPPORT by defendants of motion to dismiss [20-1] (mg) (Entered: 05/16/2002)
05/15/2002	22	DECLARATION of Suzanne M. Ambrose by defendants in suppt of motion to dismiss [20-1] (mg) (Entered: 05/16/2002)
05/15/2002	23	PROOF OF SERVICE by defendants on 5/15/02 of Mot & mot to dism, Memo of P/A in suppt, decl of Suzanne M. Ambrose in suppt of mot to dism (see doc for

		fur details) (mg) (Entered: 05/16/2002)
05/23/2002	24	APPLICANTS-IN-INTERVENTION'S EX PARTE APPLICATION filed to continue hrg date on Plf's mot for summ jgm (mg) (Entered: 05/24/2002)
05/23/2002	25	DECLARATION of Stacey M Leyton in suppt of ex parte application to continue hrg date on Plf's mot for summ jgm [24-1] (mg) (Entered: 05/24/2002)
05/24/2002	26	NOTICE OF MOTION AND MOTION by plaintiffs for summary judgment , or in the alt for partial summary judgment ; motion hearing set for 10:00 6/17/02 (mg) (Entered: 05/28/2002)
05/24/2002	27	MEMORANDUM OF P/A IN SUPPORT by plaintiffs of motion for summary judgment [26-1], or in the alt for partial summary judgment (mg) (Entered: 05/28/2002)
05/24/2002	28	REQUEST by plaintiffs for Judicial Notice in suppt of Plfs' motion for summary judgment [26-1], or in the alt for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)

05/24/2002	29	NOTICE OF LODGING of non-federal authorities & federal non-statutory by plaintiffs (mg) (Entered: 05/28/2002)
05/24/2002	30	DECLARATION of Nancy Armentrout by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	31	DECLARATION of Stephen A. Bokat by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	32	DECLARATION of Ronald S. Cohen by plaintiffs in suppt of motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	33	DECLARATION of William Dahlman by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	34	DECLARATION of Steven Highland by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg)

		(Entered: 05/28/2002)
05/24/2002	35	DECLARATION of Roger Hunte by plaintiffs in suppt of motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	36	DECLARATION of Anne Burns Johnson by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	37	DECLARATION of Fred Main by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	38	DECLARATION of Brent J North by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	39	DECLARATION of Art Sponseller by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	40	DECLARATION of Jack M. Stewart by plaintiffs in suppt of Plfs' motion for summary

		judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	41	DECLARATION of Mort Swales by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	42	DECLARATION of Gary Wheeler by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	43	DECLARATION of Daniel Zilafro by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], for partial summary judgment [26-2] (mg) (Entered: 05/28/2002)
05/24/2002	44	PROOF OF SERVICE by plaintiff on 5/24/02 of Ntc of Mot & Mot for Summ Jgm, or in the alt, Partial Summ Jgm; Plfs' Memo of P/A in Suppt of Its Mot for Summ Jgm; [Prop} Ord GR Plfs' Mot for Summ Jgm or, in the alt, Partial Summ Jgm; (see doc for fur details) (mg) (Entered: 05/28/2002)
05/24/2002	45	NTC OF NON-OPP by plaintiffs to Intervenors' ntc of mot & mot for leave to intervene as Dfts [9-1] (mg) (Entered: 05/28/2002)

05/28/2002	46	EX PARTE APPLICATION filed by defendants for order to continue the hrg on Plfs' mot for summ jgm &/or request to set a sched conf purs to FRCP 16(b) (mg) (Entered: 05/29/2002)
05/28/2002	47	MEMO OF P/A IN OPPOSITION by plaintiffs to ex parte application for order to continue the hrg on Plfs' mot for summ jgm [46-1], &/or request to set a sched conf purs to FRCP 16(b) [46-2]. Decl of Brent J. North in suppt thereof (mg) (Entered: 05/29/2002)
05/28/2002	48	SUPPLEMENTAL FILING IN SUPPORT by applicants-in-intervention of ex parte application for order to continue the hrg on Plfs' mot for summ jgm [46-1], request to set a sched conf purs to FRCP 16(b) [46-2] (mg) (Entered: 05/29/2002)
05/28/2002	49	DECLARATION of Catherine Z. Ysrael by defendants in suppt of ex parte application for order to continue the hrg on Plfs' for summ jgm [46-1], to request to set a sched conf purs to FRCP 16(b) [46-2] (mg) (Entered: 05/29/2002)
05/28/2002	50	DECLARATION of Suzanne M. Ambrose by defendants in suppt of ex parte application for order to

		continue the hrg on Plfs' mot for summ jgm [46-1], to request to set a sched conf purs to FRCP 16(b) [46-2] (mg) (Entered: 05/29/2002)
05/28/2002	51	DECLARATION of Stacey M. Leyton by defendants in suppt of suppl filing in suppt of ex parte application for order to continue the hrg on Plfs' mot for summ jgm [46-1], to request to set a sched conf purs to FRCP 16(b) [46-2] (mg) (Entered: 05/29/2002)
05/28/2002	52	DECL OF SERVICE by defendants on 5/28/02 of 1) Ex parte appl for ord cont the hrg on Plfs' mot for summ jgm &/or req to set a sched conf, 2) Decl of Suzanne M. Ambrose in suppt of ex parte appl for ord cont the hrg on Plf's mot for summ jgm &/or req to set a sched conf (see doc for fur details) (mg) (Entered: 05/29/2002)
05/28/2002	53	MINUTES (In Chambers): plfs' motion for summary judgment [26-1] & motion for partial summary judgment [26-2] is continued to 10:00 7/15/02; if appropriate, plfs may file suppl mot papers nlt 3:00 p.m. on 6/19/02; any opp papers are due not 3:00 p.m. on 6/26/02; rply papers are due nlt 3:00 p.m. on 7/3/2; the motions to intervene

		& dism sched for hrg 6/10/02 & 6/17/02 respectively remain on cal; any pty may file proper motions for inj rel if appropriate; the hrg for plfs' mot for summ jgm sched for 6/17/02 is taken off cal; by Judge Gary L. Taylor CR: none present (rmi) (Entered: 05/30/2002)
05/30/2002		PLACED IN FILE - NOT USED; [Proposed] Ord GR Ex parte appl for ord cont the hrg on Plfs' mot for summ jgm &/or req to set a sched conf purs to FRCP; ldg 5/28/02 (mg) (Entered: 05/31/2002)
05/30/2002		PLACED IN FILE - NOT USED; [Proposed] Ord GR ex parte mot to cont hrg date on Plf's mot for summ jgm; ldg 5/23/02 (mg) (Entered: 05/31/2002)
05/31/2002	54	NOTICE OF WAIVER of oral argument on motion for leave to intervene as Dfts [9-1] purs to LR 7-15 (mg) (Entered: 06/03/2002)
05/31/2002	54	REQUEST to enter order GR leave to intervene by Proposed Intervenors (mg) (Entered: 06/03/2002)
05/31/2002	55	DECLARATION of Stacey M. Leyton in suppt of Ntc of waiver of oral argument on mot for lv to

		intervene as Dfts [54-1], & request to enter order GR leave to intervene [54-1] (mg) (Entered: 06/03/2002)
05/31/2002	56	PROOF OF SERVICE by plaintiffs on 5/24/02 of Ntc of Mot & mot for summ jgm, or in the alt, part summ jgm; Plfs' memo of P/A in suppt of its mot for summ jgm or in the alt, part summ jgm; [Proposed] Ord GR Plfs' mot for summ jgm (see doc for fur details) (mg) (Entered: 06/03/2002)
05/31/2002	57	PROOF OF SERVICE by plaintiff on 5/24/02 of Ntc of mot & mot for summ jgm, or in the alt, partial summ jgm; Plfs' memo of P/A in suppt of its mot for summ jgm, or in the alt, partial summ jgm; [Proposed] Ord GR Plfs' mot for summ jgm (see doc for fur details) (mg) (Entered: 06/03/2002)
05/31/2002	58	PROOF OF SERVICE by plaintiffs on 5/28/02 of Memo of P/A in opp to applicants-in-intervention's ex parte mot to cont hrg date of Plfs' mot for summ jgm; decl of Brent J North in suppt thereof (mg) (Entered: 06/03/2002)
06/04/2002		PLACED IN FILE - NOT USED; [Proposed] Ord GR waiver of oral argument & mot for lv to

		intervene; ldg 5/31/02 (mg) (Entered: 06/05/2002)
06/04/2002	59	ORDER by Judge Gary L. Taylor granting request to enter order granting leave to intervene [54-1] (mg) (Entered: 06/05/2002)
06/04/2002	60	ANSWER filed by intervenors to complaint [1-1] (mg) (Entered: 06/05/2002)
06/04/2002	61	STIPULATION and ORDER by Judge Gary L. Taylor cont hearings on Dfts' motion to dismiss [20-1] to 7/1/02; Plfs' mot for summary judgment [26-1], or partial summary judgment [26-2] to 8/26/02 (mg) (Entered: 06/05/2002)
06/05/2002		PLACED IN FILE - NOT USED; Applicants-in-intervention's objection to intradistrict assignment & request for ruling on whether intradistrict assignment is proper; rcd 5/3/02 (mg) (Entered: 06/06/2002)
06/05/2002	62	ORDER by Judge Gary L. Taylor RE: 1) Early Meeting of Ptys, 2) Sched Conf; scheduling conf set for 9:00 10/21/02 (see doc for fur details) (mg) (Entered: 06/07/2002)
06/13/2002	63	NOTICE of entry of order GR

		AFLC-CIO & CA Labor Fed's mot for lv to intervene by intervenors AFL-CIO, CA Labor Fed AFL-CIO (mg) (Entered: 06/17/2002)
06/17/2002	64	MEMO OF P/A IN OPPOSITION by plaintiffs to Dfts' motion to dismiss [20-1] (mg) (Entered: 06/18/2002)
06/17/2002	65	DECLARATION of Brent J North by plaintiffs in suppt of Plfs' Memo of P/A in opp to motion to Dfts' mot to dismiss [20-1] (mg) (Entered: 06/18/2002)
06/17/2002	66	REQUEST by plaintiffs for Judicial Notice (mg) (Entered: 06/18/2002)
06/17/2002	67	NOTICE by plaintiffs of continuance of hrg & briefing sched on Dfts' mot to dism & Plfs' mot for summ jgm, or, in the alt partial summ jgm (mg) (Entered: 06/18/2002)
06/17/2002	68	NOTICE by plaintiffs of lodging of non-fed authorities & fed non-statutory (mg) (Entered: 06/18/2002)
06/18/2002	69	PROOF OF SERVICE by plaintiffs on 6/17/02 of Plf's memo of P/A in opp to Dfts' mot to dism; decl of Brent North in suppt thereof (see

		doc for fur details) (mg) (Entered: 06/19/2002)
06/20/2002	70	JOINT RULE 26 DISCOVERY PLAN filed; est length of trial 2 days (mg) (Entered: 06/25/2002)
06/24/2002	71	REPLY by defendants to Plfs' opp to Dfts' motion to dismiss [20-1] (filed as Plfs' reply to Dfts' Opp to Plfs' Mot to Dism) (mg) (Entered: 06/26/2002)
06/24/2002	72	REQUEST by defendants for Judicial Notice (mg) (Entered: 06/26/2002)
06/24/2002	73	DECLARATION OF SERVICE by defendant on 6/24/02 of Plfs reply to Dfts' Opp to Plfs' Mot to Dism; Dfts' Req for Jud Ntc (mg) (Entered: 06/26/2002)
06/28/2002	74	REQUEST by plaintiff for Judicial Notice re motion to dismiss [20-1] (mg) (Entered: 07/01/2002)
06/28/2002	75	DECLARATION of Mark A Johnson by plaintiffs in suppt of Plfs' req for judicial ntc re motion to dismiss [20-1] (mg) (Entered: 07/01/2002)
06/28/2002	76	DECLARATION of Nancy Armentrout by plaintiffs in suppt of Plfs' req for jud ntc re motion to dismiss [20-1] (mg) (Entered:

		07/01/2002)
06/28/2002	77	DECLARATION of Stephen A Bokat by plaintiffs in suppt of Plfs' req for jud ntc re motion to dismiss [20-1] (mg) (Entered: 07/01/2002)
06/28/2002	78	DECLARATION of Art Sponseller by plaintiffs in suppt of Plfs' req for jud ntc re motion to dismiss [20-1] (mg) (Entered: 07/01/2002)
06/28/2002	79	DECLARATION of William Dahlman by plaintiffs in suppt of Plfs' req for jud ntc re motion to dismiss [20-1] (mg) (Entered: 07/01/2002)
06/28/2002	80	PROOF OF SERVICE by plaintiffs on 6/28/02 of Req for Jud Ntc; decls of William Dahlman, Art Sponseller, Stepehen A Bokat, Mark A Johnson & Nancy Armentrout in suppt thereof (mg) (Entered: 07/01/2002)
06/28/2002	81	NOTICE OF ERRATA by defendants correcting reply to Plfs opp to Dfts' mot to dism [71-1] (mg) (Entered: 07/02/2002)
07/01/2002	83	MINUTES by Judge Gary L. Taylor: Dfts' mot to dism is GR as to the Dept of Health Services, only. Motion to dism is denied in all other respects. The Crt will

		issue its written order in the near future. CR: Sally Marshall (mg) (Entered: 07/18/2002)
07/02/2002	82	ORDER by Judge Gary L. Taylor denying Dfts' motion to dismiss for lack of subject mtr jurisdiction [20-1]. (mg) (Entered: 07/03/2002)
07/02/2002		PLACED IN FILE - NOT USED Stip of plas voluntary dism of dft Dept of Health Srvs (csb) (Entered: 07/05/2002)
07/23/2002	84	STIPULATION and ORDER by Discovery Arthur Nakazato allowing leave for Dfts to exceed by 4 the limit of 10 depos contained in FRCP Rule 30(a) in order to take the depos of all the Plfs (mg) (Entered: 07/27/2002)
07/26/2002	85	ANSWER filed by defendants Bill Lockyer, Frank G Vanacore, Diana M Bonta to complaint [1-1] (mt) (Entered: 08/01/2002)
07/26/2002	86	DECLARATION OF SERVICE VIA FAX AND US MAIL by defendant on 7/26/02 of dfts' answer to complaint (mt) (Entered: 08/01/2002)
08/02/2002	87	NOTICE OF ASSOCIATION of Counsel for plaintiffs by attorneys Michael J Lotito, Bradley W

		Kampas, Scott W Oborne of Jackson Lewis LLP (mg) (Entered: 08/09/2002)
08/05/2002	88	PROOF OF SERVICE by intervenors AFL-CIO, CA Labor Fed AFL-CIO on 8/5/02 of Intervenor's Ntc of Cross-mot; Intervenors' Memo in Support of Cross-mot; [Proposed] Stmt of Uncontroverted Facts; (see doc for further details) (tso) (Entered: 08/09/2002)
08/05/2002	89	NOTICE OF MOTION AND MOTION by Dfts Bill Lockyer, Frank G Vanacore, Diana M Bonta for summary judgment , or in the alt for partial summary judgment ; motion hearing set for 10:00 8/26/02 (mg) (Entered: 08/09/2002)
08/05/2002	90	NOTICE OF CROSS-MOTION & CROSS-MOTION by intervenors AFL-CIO, CA Labor Fed AFL-CIO for summary judgment , or in the alt for partial summary judgment ; motion hearing set for 10:00 8/26/02 (mg) (Entered: 08/09/2002)
08/05/2002	91	MEMORANDUM OF P/A IN SUPPORT by intervenors AFL-CIO, CA Labor Fed AFL-CIO of cross-motion for summary judgment [90-1], cross-motion for partial summary judgment [90-2]

		(mg) (Entered: 08/09/2002)
08/05/2002	92	DECLARATION of Scott A. Kronland by intervenors AFL-CIO, CA Labor Fed AFL-CIO in suppt of cross-motion for summary judgment [90-1], cross-motion for partial summary judgment (mg) (Entered: 08/09/2002)
08/05/2002	93	MEMORANDUM OF P/A IN SUPPORT by defendants of Dfts' motion for summary judgment [89-1], or in the alt, for partial summary judgment (mg) (Entered: 08/09/2002)
08/05/2002	94	DECLARATION of Suzanne M. Ambrose by defendants in suppt of Dfts' motion for summary judgment [89-1], or in the alt for partial summary judgment [89-2] (mg) (Entered: 08/09/2002)
08/05/2002	95	DECLARATION of Barbara Hardiman by defendants in suppt of mot for summary judgment [89-1], or in the alt, for partial summary judgment [89-2] (mg) (Entered: 08/09/2002)
08/05/2002	96	DECLARATION of Gene Morrow by defendants in suppt of Dfts' motion for summary judgment [89-1], or in the alt, for partial summary judgment [89-2] (mg)

		(Entered: 08/09/2002)
08/05/2002	97	DECLARATION of Frank Vanacore by defendants in suppt of Dfts' motion for summary judgment [89-1], or in the alt, for partial summary judgment [89-2] (mg) (Entered: 08/09/2002)
08/08/2002	98	CERTIFICATION OF SERVICE by plaintiffs on 8/5/02 of Assoc of Plf's Cnsl (mg) (Entered: 08/14/2002)
08/09/2002	99	STIPULATION and ORDER by Judge Gary L. Taylor cont hearing on motion for summary judgment [26-1], partial summary judgment [26-2], [90-1], [90-2], [89-1], [89-2] to 10:00 9/9/02. The ptys' opp jgm will be fld & served on or before 8/19/02; & the ptys replies to the aforementioned Opps will be fld & svc on or before 8/26/02 (mg) (Entered: 08/15/2002)
08/19/2002	100	MEMO OF P&A IN OPPOSITION by defendants to plfs' motion for summary judgment [26-1] or, in the alt, partial summary judgment [26-2] (mt) (Entered: 08/20/2002)
08/19/2002	101	DECLARATION of Suzanne M Ambrose by defendants in opp to plfs' motion for summary judgment [26-1] or, in the alt

		partial summary judgment [26-2] (mt) (Entered: 08/20/2002)
08/19/2002	102	DECLARATION of Frank Vanacore by defendants in suppt of dfts' opp to plfs' motion for summary judgment [26-1] or, in the alt for partial summary judgment [26-2] (mt) (Entered: 08/20/2002)
08/19/2002	103	STATEMENT of genuine issues by defendants in opp to plfs' motion for summary judgment [26-1] or, in the alt partial summary judgment [26-2] (mt) (Entered: 08/20/2002)
08/19/2002	104	OBJECTIONS TO EVIDENCE SUBMITTED BY PLFS filed by defendants in suppt of plfs motion for summary judgment [26-1]; and opp to plfs' req for judicial ntc (mt) (Entered: 08/20/2002)
08/19/2002	105	DECLARATION OF SERVICE by defendants on 8/18/02 of dfts' opp to plfs' mot for S/J or, in the alt, partial S/J & supporting docs (mt) (Entered: 08/20/2002)
08/19/2002	106	MEMO IN OPPOSITION by intervenors to plfs' motion for summary judgment [26-1] or, in the alt partial summary judgment [26-2] (mt) (Entered: 08/20/2002)

08/19/2002	107	DECLARATION of Fred Azcarate by intervenors in opp to plfs motion for summary judgment [26-1] (mt) (Entered: 08/20/2002)
08/19/2002	108	DECLARATION of Stacey M Leyton by intervenors purs to FRCP 56(f) in opp to plfs' motion for summary judgment [26-1] (mt) (Entered: 08/20/2002)
08/19/2002	109	DECLARATION of Scott A Kronland by intervenors in opp to plfs' motion for summary judgment [26-1] (mt) Modified on 08/20/2002 (Entered: 08/20/2002)
08/19/2002	110	DECLARATION of Nicholas Ross by intervenors in opp to plfs' motion for summary judgment [26-1] (mt) Modified on 08/20/2002 (Entered: 08/20/2002)
08/19/2002	111	DECLARATION of Scott A Kronland by intervenors in opp to plfs' motion for summary judgment [26-1] (Volume II) (mt) (Entered: 08/20/2002)
08/19/2002	112	OBJECTIONS filed by intervenors to evidence proffered by plfs in suppt of plfs' motion for summary judgment [26-1] and opp to plfs' request for judicial notice (mt) (Entered: 08/20/2002)

08/19/2002	113	STATEMENT of genuine issues by intervenors in opp to plfs' motion for summary judgment [26-1] (mt) (Entered: 08/20/2002)
08/19/2002	114	PROOF OF SERVICE by intervenor on 8/19/02 of Intervenors' memo in opp to plfs' mot for S/J or, in the alt, partial S/J; (see doc for further specifics) (mt) (Entered: 08/20/2002)
08/19/2002	115	MEMO OF P&A IN OPPOSITION by plaintiffs to dfts & intervenors motion for summary judgment [89-1], motion for partial summary judgment [89-2], motion for summary judgment [90-1], motion for partial summary judgment [90-2] (mt) (Entered: 08/20/2002)
08/19/2002	116	DECLARATION of Mark E Reagan by plaintiffs (mt) (Entered: 08/20/2002)
08/19/2002	117	DECLARATION of Nancy Armentrout by plaintiffs in suppt of plfs' opp to dfts' and intervenors' motion for summary judgment [89-1], motion for partial summary judgment [89-2], motion for summary judgment [90-1], motion for partial summary judgment [90-2] (mt) (Entered: 08/20/2002)
08/19/2002	118	DECLARATION of Darryl Nixon

		by plaintiffs (mt) (Entered: 08/20/2002)
08/19/2002	119	DECLARATION of Bradley W Kampas by plaintiffs in opp to dfts and intervenors' motion for summary judgment [89-1], motion for partial summary judgment [89-2], motion for summary judgment [90-1], motion for partial summary judgment [90-2] (mt) (Entered: 08/20/2002)
08/19/2002	120	STATEMENT of genuine issues by plaintiffs in opp to dfts' motion for summary judgment [89-1], motion for partial summary judgment [89-2] (mt) (Entered: 08/20/2002)
08/19/2002	121	STATEMENT of genuine issues by plaintiffs in opp to intervenors' motion for summary judgment [90-1], motion for partial summary judgment [90-2] (mt) (Entered: 08/20/2002)
08/19/2002	122	CERTIFICATE OF SERVICE by plaintiffs on 8/19/02 of plfs' memo of P&A in opp to dfts' & intervenors' motions for S/J, or in the alt, partial summary judgment; (see doc for further specifics) (mt) (Entered: 08/20/2002)
08/20/2002	123	STATEMENT of genuine issues in

		opp by intervenor AFL-CIO, intervenor CA Labor Fed AFL-CIO re motion for summary judgment [89-1], motion for partial summary judgment [89-2] (dmjr) (Entered: 08/22/2002)
08/21/2002	124	Joint STIPULATION and ORDER re lv to file memo of PA in excess of page limitation & ext of time for filing & srving rply papers by Judge Gary L. Taylor. It is ord that plfs are permitted to file 35 pg memo in opp to dfts & intervenors mot for summ jgm. The ptys are permitted to exceed pg limitations for rply briefs by 10 pgs. The ptys are permitted to file rply briefs on 8/30/02. (twdb) (Entered: 08/23/2002)
08/30/2002	125	REQUEST by intervenors AFL-CIO, CA Labor Fed AFL-CIO for Judicial Notice in suppt of reply in suppt of Intv's cross-motion for summary jgm [90-1], or in the alt, partial summary judgment [90-2] (mg) (Entered: 09/05/2002)
08/30/2002	126	REPLY MEMO by intervenors AFL-CIO, CA Labor Fed AFL-CIO in suppt of Intv's mot for summary judgment [90-1], or in the alt, for partial summary judgment [90-2] (mg) (Entered: 09/05/2002)

08/30/2002	127	REPLY DECLARATION of Scott A Kronland by intervenors AFL-CIO & CA Labor Fed AFL-CIO in suppt of Intv's cross-mot for summary judgment [90-1], or in the alt, partial summary judgment (mg) (Entered: 09/05/2002)
08/30/2002	128	OBJECTIONS TO EVIDENCE PROFFERED BY PLFS, filed by intervenors AFL-CIO & CA Labor Fed AFL-CIO in opp to Intv's cross-motion for summary judgment [90-1], [90-2] (mg) (Entered: 09/05/2002)
08/30/2002	129	SUPPL DECLARATION of Darryl Nixon by plaintiffs in suppt of Plfs' motion for summary judgment [26-1], [26-2] (mg) (Entered: 09/05/2002)
08/30/2002	130	MEMO OF P/A IN REPLY by defendants to Plfs' opp to Dfts' motion for summary judgment [89-1], or in the alt, partial summary judgment (mg) (Entered: 09/05/2002)
08/30/2002	131	DECLARATION of Suzanne M Ambrose by defendants in suppt of Dfts' reply to Plfs' opp to Dfts' motion for summary judgment [89-1], or in the alt, partial summary judgment [89-2] (mg) (Entered: 09/05/2002)

08/30/2002	132	OBJECTIONS by defendants to evidence submitted by Plfs in suppt of Plfs' opp to Dfts' motion for summary judgment [89-1], for partial summary judgment [89-2] (mg) (Entered: 09/05/2002)
08/30/2002	133	DECLARATION of Matthew J Antonek by plaintiffs (mg) (Entered: 09/05/2002)
08/30/2002	134	DECLARATION of Arleen Doan by plaintiffs (mg) (Entered: 09/05/2002)
08/30/2002	135	DECLARATION of Sam Park by plaintiffs (mg) (Entered: 09/05/2002)
08/30/2002	136	REQUEST by defendants for Judicial Notice in suppt of Dft's reply to Plfs' opp to Dfts' motion for summary judgment [89-1], or in the alt, partial summary judgment [89-2] (mg) (Entered: 09/05/2002)
08/30/2002	137	REPLY BRIEF by plaintiff Chamb of Comm of US in suppt of its motion for summary judgment [26-1], or in the alt, for partial summary judgment [26-2] (mg) (Entered: 09/05/2002)
08/30/2002	138	DECLARATION of Bradley W Kampas by plaintiff Chamb of

		Comm of US in reply to Dfts' & Intv's Opp to Plf's motion for summary judgment [26-1], or in the alt for partial summary judgment [26-2] (mg) (Entered: 09/05/2002)
08/30/2002	139	PROOF OF SERVICE by intervenors AFL-CIO, CA Labor Fed AFL-CIO on 8/30/02 of Intv's reply memo in suppt of Intvs' mot for summ jgm, or in the alt, partial summ jgm; reply dec of Scott A Kronland in suppt of Intvs' cross-mot for summ jgm (see doc for fur details) (mg) (Entered: 09/05/2002)
08/30/2002	140	DECL OF SERVICE by defendants on 8/30/02 of Dfts' memo of P/A in reply to Plfs' opp to Dfts' mot for summ jgm, or in the alt, partial summ jgm; Dfts' req for judicial ntc in suppt of Dfts' reply to Plfs' opp to Dfts' mot for summ jgm (see doc for fur details) (mg) (Entered: 09/05/2002)
09/05/2002	141	EX PARTE APPLICATION filed by intervenors AFL-CIO, CA Labor Fed AFL-CIO to strike evidence submitted by Plfs in suppt of reply memo in suppt of mot for summ jgm ; Lodged Prop Order (mg) (Entered: 09/09/2002)
09/05/2002	142	DECLARATION of Scott A

		Kronland by intervenors AFL-CIO, CA Labor Fed AFL-CIO in suppt of Intv's ex parte application to strike [141-1] & purs to FRCP 56(f) (mg) (Entered: 09/09/2002)
09/05/2002	143	PROOF OF SERVICE by intervenors AFL-CIO, CA Labor Fed AFL-CIO on 9/5/02 of Intv's ex parte mot to strike evidence submitted by Plfs in suppt of reply memo in suppt of mot for summ jgm; decl of Scott A Kronland (see doc for fur details) (mg) (Entered: 09/09/2002)
09/06/2002	144	EX PARTE APPLICATION filed by defendants for ord striking Plfs' new evidence submitted in suppt of Plfs' reply to Dfts' opp to Plfs' mot for summ jgm , or in the alt to continue hrg on Plf's mot for summ jgm ; Lodged Prop Ord (mg) (Entered: 09/11/2002)
09/06/2002	145	MEMORANDUM OF P/A IN SUPPORT by defendants of ex parte application for ord striking Plfs' new evidence submitted in suppt of Plfs' reply to Dfts' opp to Plfs' mot for summ jgm [144-1], or in the alt, to continue hrg on Plf's mot for summ jgm [144-2] (mg) (Entered: 09/11/2002)
09/06/2002	146	DECLARATION of Suzanne M

		Ambrose by defendants in suppt of ex parte application for ord striking Plfs' new evidence submitted suppt of Plfs' reply to Dfts' opp to Plfs' mot for summ jgm [144-1], or in the alt, to continue hrg on Plf's mot for summ jgm [144-2] (mg) (Entered: 09/11/2002)
09/06/2002	147	PROOF OF SERVICE by defendants on 9/6/02 of Ex parte appl for ord striking Plfs' new evidence submitted in suppt of Plfs' reply to Dfts' opp to Plfs' mot for summ jgm, or in the alt, cont hrg on Plfs' mot for summ jgm (see doc for fur details) (mg) (Entered: 09/11/2002)
09/09/2002	148	MINUTES by Judge Gary L. Taylor: The fol mots for summ jgm, or in the alt, partial summ jgm, are taken under submission: Mot by Dfts Bill Lockyer, Frank G Vanacore & Diana M Bonta [89-1], [89-2]; Cross-mot by Intvs [90-1], [90-2]; & Mot by Plfs [26-1], [26-2]. CR: Sally Marshall (mg) (Entered: 09/12/2002)
09/16/2002	149	ORDER by Judge Gary L. Taylor GRANTING in part DENYING in part Plfs' motion for summary judgment [26-1], [26-2] (see doc for

		fur details) (mg) (Entered: 09/18/2002)
09/24/2002	150	MINUTES (in chambers): by Judge Gary L. Taylor: inappropriate correspondence w/Crt dated 9/20/02; any such communication shld be by appropriate, filed, pleading; CR: none present (see doc for specifics) (ln) (Entered: 09/26/2002)
09/25/2002		PLACED IN FILE - NOT USED; Intervenors' [Proposed] stmt of uncontroverted facts & concl of law in suppt of mot for summ jgm or, in the alt, partial summ jgm; ldg 8/5/02 (mg) (Entered: 09/30/2002)
09/25/2002		PLACED IN FILE - NOT USED; [Proposed] stmt of uncontroverted facts & concl of law in suppt of Plfs' mot for summ jgm or, in the alt, partial summ jgm; ldg 5/24/02 (mg) (Entered: 09/30/2002)
09/25/2002		PLACED IN FILE - NOT USED; [Proposed] Ord GR Plfs' mot for summ jgm or, in the alt, partial summ jgm; ldg 5/24/02 (mg) (Entered: 09/30/2002)
09/26/2002	152	NOTICE OF MOTION AND MOTION by defendants for reconsideration of the court's order granting plfs' motion for summary

		judgment in part ; motion hearing set for 10:00 10/21/02 (mt) (Entered: 10/03/2002)
09/26/2002	153	POINTS AND AUTHORITIES IN SUPPORT by defendants of dfts' motion for reconsideration of the court's order granting plfs' motion for summary judgment in part [152-1] (mt) (Entered: 10/03/2002)
09/26/2002	154	DECLARATION of Phyllis Cheng by defendants in suppt of dfts' motion for reconsideration of the court's order granting plfs' motion for summary judgment in part [152-1] (mt) (Entered: 10/03/2002)
09/26/2002	155	DECLARATION OF SERVICE by defendants on 9/26/02 of motion for reconsideration and supporting docs (mt) (Entered: 10/03/2002)
09/26/2002	156	REQUEST by defendants for Judicial Notice in suppt of dfts' motion for reconsideration of the court's order granting plfs' motion for summary judgment in part [152-1] (mt) (Entered: 10/03/2002)
09/26/2002	157	NOTICE OF MOTION AND MOTION by intervenors AFL-CIO, CA Labor Fed AFL-CIO for reconsideration ; motion hearing set for 10:00 10/21/02 (mt) (Entered: 10/03/2002)

09/26/2002	158	REQUEST by intervenors AFL-CIO, CA Labor Fed AFL-CIO for Judicial Notice in suppt of motion for reconsideration [157-1]; decl of Scott A Kronland,; exhibits A-C (mt) (Entered: 10/03/2002)
09/26/2002	159	PROOF OF SERVICE by intervenor AFL-CIO, intervenor CA Labor Fed AFL-CIO on 9/26/02 of Intervenors' ntc of motion & motion for reconsideration (see doc for fur details) (mt) (Entered: 10/03/2002)
10/01/2002	151	MINUTES (in chambers): by Judge Gary L. Taylor: cnsl has contacted Crt, asking if further Ord is going to be issued on the recent mots for summ jgm; Crt is not planning to issue further Ord; any pty may make any addl mot they deem appropriate; CR: none present (see doc for specifics) (ln) (Entered: 10/02/2002)
10/03/2002	160	RECEIPT OF TRANSCRIPT of proceedings for the following date(s): 7/1/02; CR: Sally Marshall (mg) (Entered: 10/10/2002)
10/03/2002		TRANSCRIPT filed for proceedings held on 7/1/02 (mg) (Entered: 10/10/2002)
10/09/2002	161	STIPULATION and ORDER by

		Judge Gary L. Taylor cont hearing on Dfts' & Intervenors' motions for reconsideration [157-1], [152-1] to 10:00 11/18/02. Sched conf cont to 10:00 11/18/02 . (mg) (Entered: 10/11/2002)
10/18/2002	162	DECLARATION OF SERVICE by defendants on 10/16/02 of Stip & Order to cont the hrg & briefing sched on Dfts' & Intervenors' mots for recon & the sched conf (mg) (Entered: 10/28/2002)
11/04/2002	163	Memorandum of points and authorities in OPPOSITION by plaintiff to motion for reconsideration [157-1], motion for reconsideration of the court's order granting plfs' motion for summary judgment in part [152-1] (csb) (Entered: 11/09/2002)
11/12/2002	164	STIPULATION and ORDER by Judge Gary L. Taylor, continuing the hearing on motion for reconsideration [157-1] 10:00 1/6/03, hearing motion for reconsideration of the court's order granting plfs' motion for summary judgment in part [152-1] 10:00 1/6/03, continuing the scheduling conference to 10:00 1/6/03 (bp) (Entered: 11/18/2002)
11/19/2002	165	DECLARATION OF SERVICE by

		defendant on 11/15/02 of Stipulation and Order to continue hearing on Defendants' and Intervenors' motions for reconsideration and the scheduling conference (mg) (Entered: 11/25/2002)
12/27/2002	167	STIPULATION filed re joint request to reschedule 1/6/03 motions hearing & scheduling conference if accompanying stipulation and proposed order is not approved (mg) (Entered: 01/06/2003)
01/03/2003	166	JUDGMENT AND ORDER by Judge Gary L. Taylor: Judgment is hereby entered as follows: CA Govt Code sections 16645.2 and 16645.7 are hereby declared to be invalid as applied to employers covered by the National Labor Relations Act. Court finds sections 16645.2 and 16645.7 to be preempted by the National Labor Relations Act and thus invalied under the Supremacy Clause. Dfts and Intervenors as well as their agents, servants, and employees and those persons in active concert of participation with them who receive actual notice of this order, are hereby enjoined and restrained from taking any actions to enforce

		CA Govt Code sections 16645.2 and 16645.7 on behalf of the people of the State of California against any employer covered by the National Labor Relations Act; terminating case (MD JS-6) (mt) (Entered: 01/03/2003)
01/03/2003	168	STIPULATION and ORDER by Judge Gary L. Taylor GRANTING IN PART Defendants' & Intervenors' motions for reconsideration [157-1], [152-1] (see documents for further details) (mg) (Entered: 01/07/2003)
01/03/2003		PLACED IN FILE - NOT USED; [Proposed] Order granting Defendants' motion for reconsideration of the Court's order granting Plaintiffs' motion for summary judgment in part; lodged 9/26/02 (mg) (Entered: 01/07/2003)
01/03/2003		PLACED IN FILE - NOT USED; [Proposed] Order granting intervenors' motion for reconsideration of the Court's order granting Plaintiffs' motion for summary judgment in part; lodged 9/26/02 (mg) (Entered: 01/07/2003)
01/03/2003		PLACED IN FILE - NOT USED; Joint stipulation & [proposed]

		order granting Defendants' & Intervenors' motion for reconsideration in part & granting request for partial final judgment regarding California government code sections 16645.2 & 16645.7 (mg) (Entered: 01/07/2003)
01/07/2003	169	NOTICE OF APPEAL by intervenors American Federation of Labor and Congress of Industrial Organizations and California Labor Federation,AFL-CIO to 9th C/A from Dist. Court jgm fld 1/3/03 [166-2] (cc: Altshuler,Berzon,Nussbaum,Rubin & Demain;Attorney General of the State of California;State Attorney General;Hopper Lundy & Bookman,Inc.;Jackson Lewis LLP;Stephen A. Bokat) Fee: Billed. (ghap) (Entered: 01/09/2003)
01/07/2003	170	REPRESENTATION STATEMENT re appeal [169-1] (ghap) (Entered: 01/09/2003)
01/07/2003	171	PROOF OF SERVICE by intervenors American Federation of Labor and Congress of Industrial Organizations and California Labor Federation,AFL-CIO. (ghap) (Entered: 01/09/2003)
01/07/2003		LODGED Civil Appeals Docketing

		Statement submitted by intervenors American Federation of Labor and Congress of Industrial Organizations and California Labor Federation,AFL-CIO. (fwd to 9th cca) (ghap) (Entered: 01/09/2003)
01/10/2003	172	APPLICATION FOR EX PARTE APPLICATION filed by intervenors for order staying judgment pending appeal (mg) (Entered: 01/13/2003)
01/10/2003	173	PROOF OF SERVICE by intervenors on 1/10/03 of Application for ex parte order staying judgment pending appeal (mg) (Entered: 01/13/2003)
01/13/2003	174	NOTICE OF CHANGE Of Address filed by attorneys Mark A Johnson and Mark E Reagan for plaintiff Internext Group. The new address for Hooper, Lundy & Bookman Inc is 180 Montgomery Street, Suite 1000, San Francisco, CA 94104. The telephone number & fax number remain the same (mg) (Entered: 01/14/2003)
01/13/2003	175	NOTICE OF APPEAL by defendant California Attorney General Bill Lockyer, defendant Diana M Bonta, defendant Frank G Vanacore to 9th C/A from Dist.

		Court Judgment & Order filed on 1/3/03, [166-2] (cc: Suzanne M. Ambrose; Hopper Lundy & Bookman; Scott W. Oborne; Stephen A. Bokat; Richard T. Waldow; Altshuler, Berzon, Nussbaum, Rubin & Demain; O'Melveny & Myers) Fee: Billed (weap) (Entered: 01/14/2003)
01/13/2003	176	REPRESENTATION STATEMENT re appeal [175-1] (weap) (Entered: 01/14/2003)
01/13/2003		LODGED Civil Appeals Docketing Statement submitted by defendant Bill Lockyer, defendant Diana M Bonta, defendant Frank G Vanacore (FWD TO CRD) (weap) (Entered: 01/14/2003)
01/13/2003	177	PROOF OF SERVICE by defendant Bill Lockyer, defendant Diana M Bonta, defendant Frank G Vanacore on 1/10/03 of Notice of Appeal from Judgment enterd on 1/3/03; Representation Statement for Appeal & Civil Appeals docketing Statement. (weap) (Entered: 01/14/2003)
01/14/2003	178	OPPOSITION by plaintiffs to Intervenors' ex parte application for order staying judgment pending appeal [172-1] (mg) (Entered: 01/15/2003)

01/14/2003	179	DECLARATION of Bradley W Kampas by plaintiffs in support of Plaintiffs' opposition to Intervenors' ex parte application for order staying judgment pending appeal [172-1] (mg) (Entered: 01/15/2003)
01/14/2003	180	MINUTES (In Chambers) by Judge Gary L. Taylor: denying Intervenor's ex parte application for order staying judgment pending appeal [172-1]; CR: (not present) (mg) (Entered: 01/15/2003)
01/14/2003		PLACED IN FILE - NOT USED; [Proposed] order staying judgment pending appeal; lodged 1/10/03 (mg) (Entered: 01/16/2003)
01/16/2003	181	TRANSCRIPT DESIGNATION and ordering form for dates: 9/9/02 CR: Sally Marshall. (ghap) (Entered: 01/16/2003)
01/24/2003		Appeal Fee Paid re [175-1] fee in amount of $ 105.00 (Receipt # 31294) (dlu) (Entered: 01/24/2003)
01/24/2003	182	EX PARTE APPLICATION filed by defendants for order staying judgment pending appeal ; Lodged Proposed Order (mg) (Entered: 01/24/2003)

01/24/2003	183	DECLARATION OF SERVICE by defendants on 1/23/03 of Application for ex parte order staying judgment pending appeal & [proposed] order (mg) (Entered: 01/24/2003)
01/27/2003	184	MINUTES (in chambers): dft's ex parte application for order staying judgment pending appeal [182-1] is DENIED; by Judge Gary L. Taylor CR: none present (ln) (Entered: 01/28/2003)
01/27/2003		PLACED IN FILE - NOT USED; [Proposed] Order staying judgment pending appeal; lodged 1/24/03 (mg) (Entered: 01/30/2003)
01/29/2003	185	OPPOSITION by plaintiffs to Defendants' ex parte application for order staying judgment pending appeal [182-1] (mg) (Entered: 01/31/2003)
01/31/2003	186	NOTIFICATION by Circuit Court of Appellate Docket Number appeal [169-1] 03-55166 (pjap) (Entered: 01/31/2003)
01/31/2003	187	NOTIFICATION by Circuit Court of Appellate Docket Number appeal [175-1] 03-55169 (pjap) (Entered: 01/31/2003)
02/03/2003	189	TRANSCRIPT DESIGNATION

		and ordering form for dates: 9/9/02 CR: Sally Marshall (dlu) (Entered: 02/05/2003)
02/04/2003		Appeal Fee Paid re [169-1] fee in amount of $ 105.00 (Receipt # 31827) (dlu) (Entered: 02/04/2003)
02/04/2003	188	NOTICE OF CLERICAL ERROR: case number is changed from SACV02-37 GLT(ANx) to SACV02-377 GLT(ANx); doc was docketed to correct case number however was scanned to incorrect case number; (ln) (Entered: 02/04/2003)
03/17/2003	190	ORDER FROM USCA appellants' motion to consolidated these appeals is granted. Appeal Nos. 03-55166 and 03-55169 are consolidated. Appellants' motion to stay the district court's judgment pending appeal is denied. (03-55166 & 03-55169) (ghap) (Entered: 03/24/2003)
03/21/2003	191	RECEIPT for reporter's transcript (twdb) (Entered: 03/24/2003)
03/21/2003	192	REPORTER'S TRANSCRIPT of proceedings filed. on 9/9/02 (twdb) (Entered: 03/24/2003)
07/28/2003	193	CLERK'S record on appeal transmitted to Circuit [175-1], [169-1] vols: 11, 2 brown folders of

		docket no. B0066, B0111, transcripts: 2. Missing document: Docket no. 162 not included. (03-55166, 03-55169) (pjap) (Entered: 07/28/2003)
07/28/2003	194	CERTIFICATE of Record Transmitted to USCA (03-55169) (cc: all parties) (pjap) (Entered: 07/28/2003)
07/28/2003	195	CERTIFICATE of Record Transmitted to USCA (03-55166) (cc: all parties) (pjap) (Entered: 07/28/2003)
01/17/2006	196	ORDER from 9th CCA filed, CCA # 03-55166, 03-55169. Order received in this district on 1/20/06. Upon the vote of a majority of nonrecused regular active judges of this court, it is ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court. (ghap,) (Entered: 01/23/2006)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

The Chamber of Commerce of the United States, California Chamber of Commerce Employers Group, California Healthcare Association, California Manufacturers and Technology Association, California Association of Health Facilities, California Association of Homes & Services for the Aging, Bettec Corporation, Marksherm Corporation, Zilaco, Inc., Zilaco Del Rio Healthcare Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor — Costa Mesa, Internext Group,

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and DOES 1 through 10,

Defendants.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs CHAMBER OF COMMERCE OF THE UNITED STATES ("US Chamber"), CALIFORNIA CHAMBER OF COMMERCE ("California Chamber"), EMPLOYERS GROUP, CALIFORNIA HEALTHCARE ASSOCIATION ("CHA"), CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION ("CMTA"), CALIFORNIA ASSOCIATION OF HEALTH FACILITIES ("CAHF"), CALIFORNIA ASSOCIATION OF HOMES & SERVICES FOR THE AGING ("CAHSA"), BETTEC CORPORATION ("Bettec"), MARKSHERM CORPORATION ("Marksherm"), ZILACO, INC., ZILACO, DEL RIO HEALTH CARE, INC. ("Del Rio"), BEVERLY HEALTH & REHABILITATION SERVICES, INC. dba BEVERLY MANOR — COSTA MESA ("Beverly Manor"), and THE INTERNEXT GROUP ("Internext"), (collectively, "Plaintiffs"), by and through their counsel, for their complaint against defendants, BILL LOCKYER, Attorney General of the State of California ("Attorney General") the Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and DOES 1 through 10 (collectively, "Defendants"), upon knowledge and belief allege:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this suit pursuant to 28 U.S.C. Section 1331 as Plaintiffs' claims arise under:

a. the due process and equal protection

provisions of the Fourteenth Amendment to the United States Constitution – which incorporates the free speech provisions of the First Amendment.

b. Article VI of the United States Constitution which designates the Constitution and Laws of the United States as the supreme Law of the Land; and

c. the laws of the United States, namely, the National Labor Relations Act, 29 U.S.C. Section 141 *et seq*, the Labor Management Reporting and Disclosure Act, 29 U.S.C. Section 401 *et seq*, and the Medicare Act and Medicaid Act, 42 U.S.C. Section 1395 *et seq.* and 1396 *et seq.*

2. This Court has supplemental jurisdiction over this subject matter pursuant to 28 U.S.C. Section 1367(a) as Plaintiffs' claims, arising under the California Constitution, are so closely related to the federal question claims that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b) as this Court is sited in the Federal judicial district where a substantial part of the events giving rise to Plaintiffs' claims have occurred, are now occurring, and will occur in the future if not curtailed through actions of this Court. Employer members of Plaintiffs US Chamber, California Chamber, Employers Group, CHA, CMTA, CAHF, and CAHSA are situated in this district and

are and will continue to be adversely affected by the irreparable harms sought to be remedied and prevented by this Court's action upon this Complaint. In addition, Plaintiffs CAHF, Bettec, Zilaco, Inc., Zilaco, Marksherm, Del Rio and Internext are situated in Los Angeles County and are and will continue to be affected by the harms sought to be remedied by this Complaint. Beverly Manor is located in Orange County and is and will continue to be adversely affected by the harms sought to be remedied by this Complaint.

II. NATURE OF ACTION

4. This action seeks declaratory relief pursuant to the Declaratory Relief Act, 28 U.S.C. Sections 2201-2202, that California Assembly Bill 1889, contained in California Government Code Sections 16645 through 16649 ("AB 1889"), is unconstitutional under the Federal and California Constitutions, is preempted under the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.* ("NLRA"), the Labor Management Reporting and Disclosure Act, 29 U.S.C. Section 401 *et seq.* ("LMRDA"), and is preempted by and violates the provisions of the California State Medicaid Plan established pursuant to the requirements of the Medicare Act, 42 U.S.C. Section 1395 *et seq.* ("Medicare Act") and Medicaid Act, 42 U.S.C. Section 1996 *et seq.* ("Medicaid Act"). It also seeks preliminary and permanent injunctive relief enjoining the enforcement of AB 1889 and other related actions undertaken by defendants pursuant to its provisions. (A copy of AB 1889 is attached hereto as Exhibit A.)

III. PARTIES

5. Plaintiff US Chamber is the world's largest business federation, representing an underlying membership of more than three million businesses and organizations of every size and in every industry sector and region of the country. It has approximately 11,000 members in the state of California. A principle function of the US Chamber is to represent the interests of its members on issues of vital concern to the business community before the Congress, the Executive Branch and the courts.

6. More than one of the US Chamber's member employers receive grants of state funds, have contracts with the State of California under which they receive payments from the State in excess of $50,000 and receive state funds in excess of $10,000 in a calendar year on account of their participation in state programs. Some of these employers provide services to the state in excess of $50,000. Some of these employers have employees who perform services on service contracts for the state and seek reimbursement from the state. Some of these employers are currently experiencing organizing activities of labor organizations, and expect to continue to experience such labor organizing activities because a union representation election is scheduled in the future. Some of these employers have their supervisors and other management personnel inform employees who perform work on state contracts of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay legal

counsel with respect to the organizing activity to advise them of their legal rights and responsibilities under the National Labor Relations Act and to assist them with union organizing drives and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay and retain consultants to assist them with organizing and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay their supervisory and management employees to assist in communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers incur expenses related to the creation and distribution of print and other materials for the purpose of communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers lease property from the State of California to hold meetings with employees and supervisors for the purpose of informing employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. These properties are not equally available to the general public to hold meetings free of charge. The certification and reporting requirements of AB 1889 will cost these employers significant sums of money and resources. In order to

attempt to comply with the requirements of AB 1889, these employers must expend significant sums of money and resources. Materials, products and services of these employers affect interstate commerce and cross state lines.

7. Plaintiff California Chamber is an association of 13,000 employers who employ three million California employees. One of the purposes of the California Chamber is to inform employees and assist member employers' efforts to inform employees about labor unions. Specifically, one of the purposes of the California Chamber is to inform its member employers regarding how to lawfully advise their employees of the disadvantages of unionizing. The California Chamber further exists to ease legislative and administrative burdens of California employers. Protecting member employers' free speech rights, National Labor Relations Act rights, equal protection rights and right to counsel is directly germane to the purpose of the California Chamber.

8. More than one of California Chamber's member employers receive grants of state funds, have contracts with the State of California under which they receive payments from the State in excess of $50,000 and receive state funds in excess of $10,000 in a calendar year on account of their participation in state programs. Some of these employers provide services to the state in excess of $50,000. Some of these employers have employees who perform services on service contracts for the state and seek reimbursement from the state. Some of these employers are currently experiencing organizing activities of labor organizations, and expect to continue to experience such labor organizing

activities because a union representation election is scheduled in the future. Some of these employers have their supervisors and other management personnel inform employees who perform work on state contracts of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay legal counsel with respect to the organizing activity to advise them of their legal rights and responsibilities under the National Labor Relations Act and to assist them with union organizing drives and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay and retain consultants to assist them with organizing and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay their supervisory and management employees to assist in communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers incur expenses related to the creation and distribution of print and other materials for the purpose of communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers lease property from the State of California to hold meetings with employees and supervisors for the

purpose of informing employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. These properties are not equally available to the general public to hold meetings free of charge. The certification and reporting requirements of AB 1889 will cost these employers significant sums of money and resources. In order to attempt to comply with the requirements of AB 1889, these employers must expend significant sums of money and resources. Materials, products and services of these employers affect interstate commerce and cross state lines.

9. The Employers Group is an association of employers whose members include 4,700 employers in California who employ over one million California employees. One of the purposes of the Employers Group is to assist member employers' efforts to inform employees about labor unions. Specifically, one of the purposes of the Employers Group is to advise its member employers regarding how to lawfully discuss with their employees the key considerations of unionizing. The Employers Group further exists to help ease legislative and administrative burdens of California employers. Protecting member employers' First Amendment free speech rights, National Labor Relations Act rights, equal protection rights and right to counsel is directly germane to the purpose of the Employers Group.

10. More than one of the Employers Group's member employers receive grants of state funds, have contracts with the State of California under which they receive payments from the State in excess of $50,000 and receive state funds in excess of $10,000

in a calendar year on account of their participation in state programs. Some of these employers provide services to the state in excess of $50,000. Some of these employers have employees who perform services on service contracts for the state and seek reimbursement from the state. Some of these employers are currently experiencing organizing activities of labor organizations, and expect to continue to experience such labor organizing activities because a union representation election is scheduled in the future. Some of these employers have their supervisors and other management personnel inform employees who perform work on state contracts of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay legal counsel with respect to the organizing activity to advise them of their legal rights and responsibilities under the National Labor Relations Act and to assist them with union organizing drives and election campaigns in an effort to inform employees o the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay and retain consultants to assist them with organizing and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay their supervisory and management employees to assist in communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with

management. Some of these employers incur expenses related to the creation and distribution of print and other materials for the purpose of communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers lease property from the State of California to hold meetings with employees and supervisors for the purpose of informing employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. These properties are not equally available to the general public to hold meetings free of charge. The certification and reporting requirements of AB 1889 will cost these employers significant sums of money and resources. In order to attempt to comply with the requirements of AB 1889, these employers must expend significant sums of money and resources. Materials, products and services of these employers affect interstate commerce and cross state lines.

11. The CHA is an association of healthcare employers whose members include approximately 432 employers in California who employ approximately 380,000 California employees. One of the purposes of the CHA is to inform employees and assist member employers' efforts to inform employees about labor unions. Specifically, one of the purposes of the CHA is to inform its member employers regarding how to lawfully advise their employees of the advantages and disadvantages of unionizing. The CHA further exists to ease legislative and administrative burdens of California healthcare employers. Protecting member employers' free

speech rights, National Labor Relations Act rights, equal protection rights and right to counsel is directly germane to the purpose of the CHA.

12. More than one of CHA's member employers receive grants of state funds, have contracts with the State of California under which they receive payments from the State in excess of $50,000 and receive state funds in excess of $10,000 in a calendar year on account of their participation in state programs. Some of these employers provide services to the state in excess of $50,000. Some of these employers have employees who perform services on service contracts for the state and seek reimbursement from the state. Some of these employers are currently experiencing organizing activities of labor organizations, and expect to continue to experience such labor organizing activities because a union representation election is scheduled in the future. Some of these employers have their supervisors and other management personnel inform employees who perform work on state contracts of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay legal counsel with respect to the organizing activity to advise them of their legal rights and responsibilities under the National Labor Relations Act and to assist them with union organizing drives and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay and retain consultants to assist them with organizing and election campaigns in an effort

to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay their supervisory and management employees to assist in communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers incur expenses related to the creation and distribution of print and other materials for the purpose of communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers lease property from the State of California to hold meetings with employees and supervisors for the purpose of informing employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. These properties are not equally available to the general public to hold meetings free of charge. Some of these employers are state government hospitals and public employers which receive state funds. The certification and reporting requirements of AB 1889 will cost these employers significant sums of money and resources. In order to attempt to comply with the requirements of AB 1889, these employers must expend significant sums of money and resources. Materials, products and services of these employers affect interstate commerce and cross state lines.

13. The CMTA is an association of employers whose members include approximately 800 employers in California who employ upwards of

one million California employees. The CMTA exists to ease legislative and administrative burdens of California employers. One of the purposes of the CMTA is to assist member employers' efforts to inform employees about labor unions. Specifically, one of the purposes of the CMTA is to inform its member employers regarding how to advise their employees of the disadvantages of unionizing. Protecting member employers' First Amendment free speech rights, National Labor Relations Act rights, equal protection rights and right to counsel is directly germane to the purpose of the CMTA.

14. More than one of the CMTA's member employers receive grants of state funds, have contracts with the State of California under which they receive payments from the State in excess of $50,000 and receive state funds in excess of $10,000 in a calendar year on account of their participation in state programs. Some of these employers provide services to the state in excess of $50,000. Some of these employers have employees who perform services on service contracts for the state and seek reimbursement from the state. Some of these employers are currently experiencing organizing activities of labor organizations, and expect to continue to experience such labor organizing activities because a union representation election is scheduled in the future. Some of these employers have their supervisors and other management personnel inform employees who perform work on state contracts of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay legal counsel with respect to the organizing activity to

advise them of their legal rights and responsibilities under the National Labor Relations Act and to assist them with union organizing drives and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay and retain consultants to assist them with organizing and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers pay their supervisory and management employees to assist in communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers incur expenses related to the creation and distribution of print and other materials for the purpose of communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. Some of these employers lease property from the State of California to hold meetings with employees and supervisors for the purpose of informing employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. These properties are not equally available to the general public to hold meetings free of charge. The certification and reporting requirements of AB 1889 will cost these employers significant sums of money and resources. In order to attempt to comply with the requirements of AB 1889,

these employers must expend significant sums of money and resources. Materials, products and services of these employers affect interstate commerce and cross state lines.

15. The CAHF is an association representing approximately 1,600 licensed skilled nursing facilities ("SNFs"), intermediate care facilities ("ICFs") and intermediate care for the developmentally disabled facilities ("ICF-DDs") in the State of California (collectively, "long term care facilities"). While the CAHF represents member organizations that are organized as both "for profit" and "not for profit" entities, the majority of its membership operates long term care facilities organized as "for profit" entities. The CAHF members employ approximately -72,000 employees. The CAHF exists to advocate on behalf of its member long term care facilities before all relevant governmental bodies, including the executive, legislative and judicial branches of the state and federal governments in order to ensure that the interests of such facilities are advanced and not impaired in all material respects. One of the fundamental purposes of the CAHF is to protect the interests of its member facilities in their role as participants in the Medicaid program (known as Medi-Cal in California), including ensuring that governmental action involving the Medi-Cal program is consistent with the California State Medicaid Plan ("State Plan") and federal Medicaid laws and regulations. Such governmental action includes the application of federal and state requirements involving the establishment of facility reimbursement under Medi-Cal (such as cost reporting, rate setting and auditing) as well as the quality of care to be

provided by facilities in order to participate in the Medi-Cal program. Another fundamental purpose of the CAHF is to protect members in their roles as employers, including ensuring that the public policy defining the relations between member facilities and their employees remains consistent with the rights and privileges secured by the United States and California Constitutions, the National Labor Relations Act and other federal and state labor laws and are not compromised or violated in any manner. The specific issues raised in this Complaint and the interests underlying the issues are entirely consistent with the CAHF's mission and purpose as well as the services provided to its members.

16. Not only do the vast majority of CAHF's members receive funds in excess of $10,000 through the Medi-Cal program in each calendar year (in the form of reimbursement for services provided to beneficiaries), they are also heavily dependent on the revenue provided through this program. Numerous CAHF member facilities (including SNFs, ICFs and ICF-DDs) obtain as much as 75% to 100% of their revenue through the Medi-Cal program. The restrictions on the use of such funds has had and will continue to have dramatic effects on member facilities' abilities to exercise their protected Constitutional and statutory rights. For example, some of these member facilities have experienced, are experiencing and/or will likely experience organizing activities of labor organizations which have led to or may lead to an union representation election. Others have experienced, are experiencing and/or will likely experience activity undertaken by employees represented by a labor organization to decertify the union which has led to or may lead to an election.

Facilities faced with either of the above situations regularly pay legal counsel or other professional consultants to advise these employers of their legal rights under the National Labor Relations Act and to assist them with union organizing drives and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and benefits of maintaining or regaining a direct relationship with management. Some of these employers pay their supervisory and management employees to assist in communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining or regaining a direct relationship with management. Some of these employers incur expenses related to the creation and distribution of print and other materials for the purpose of communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. In addition, in order to attempt to comply with the requirements of AB 1889, these employers must expend significant sums of money and resources. Employers will also expend significant sums of money and resources in order to attempt to comply with the certification and reporting requirements of AB 1889. The services provided by CAHF's members and the products and material utilized by such members affect interstate commerce.

17. The CAHSA is a nonprofit, charitable, California corporation that represents the interests of approximately 380 long term care, seniors housing and seniors services members. The CAHSA members operate approximately 10,200 skilled nursing beds in

128 SNF facilities throughout the state, each of which is licensed and regulated by the DHS. As with the CAHF's members, the CAHSA's members are similarly dependent on the Medi-Cal program for revenue. Unlike the CAHF, the CAHSA members must be organized as "not for profit" organizations that are sponsored by religious, fraternal, government, neighborhood, minority or ethnic organizations, and each must be governed by a bona fide volunteer board and be exempt from federal tax. In advocating for its members, the CAHSA's fundamental purpose and mission is substantially the same as the purpose and mission of CAHF. Numerous CAHSA member facilities receive a portion of their revenue through the Medi-Cal program. Some of these member facilities have experienced, are experiencing and/or will likely experience organizing activities of labor organizations which have led to or may lead to a union representation election. The restrictions AB 1889 places on the use of these facilities funds has had and will continue to have dramatic effects on member facilities' abilities to exercise their protected Constitutional and statutory rights. In addition, the impact of the provisions of AB 1889 are substantially the same as for the employer members of the CAHF.

18. Plaintiffs US Chamber, California Chamber, Employers Group, CHA, CMTA, CAHF and CAHSA have organizational standing as each has at least one member employer which has standing in its own right to present the claims asserted herein. Further, the interests sought to be protected are germane to the associations' purposes, and neither the claims asserted nor the relief requested requires that the members participate

individually in the suit.

19. Members of Plaintiffs' US Chamber, California Chamber, Employers Group, CHA, CMTA, CAHF, arid CAHSA have faced, are currently facing and/or will likely face union organizing and/or decertification activities. As a result of AB 1889, these members' constitutional and statutory rights are presently being chilled, impaired and impermissibly interfered with. Further, attempts at compliance with AB 1889 will require significant employer expenditures.

20. Bettec Corporation is the holder of a valid license issued by the Department of Health Services ("DHS") to operate the 99 bed SNF known as Sunray East Convalescent Hospital in Los Angeles, California ("Sunray"). Sunray currently participates in the Medi-Cal program and is heavily dependent on its continued participation in the program. Sunray expects that it will incur expenditures for services provided by legal counsel and/or professional consultants to advise it of its legal rights under the National Labor Relations Board involving Union organizing activity. It will also educate and train its supervisors and other management personnel on such legal rights and the manner of informing employees of the potential drawbacks of membership in a labor organization and the benefits of maintaining a direct relationship with management. It expects to pay its supervisors and other management personnel for these activities. It also expects to create and distribute print and other materials. Based upon its heavy reliance on the Medi-Cal program and the prohibitions of AB 1889, it will likely be unable to take any of these protected

actions. In addition, Sunray will be required to expend significant financial resources in order to attempt to comply with the provisions of AB 1889. It will also be required to spend significant monies to attempt to comply with the certification and reporting requirements of AB 1889.

21. Marksherm is the holder of a valid license issued by the DHS to operate the 69 bed SNF known as Crescent Bay Convalescent Hospital in Santa Monica, California ("Crescent Bay"). Crescent Bay currently participates in the Medi-Cal program and is heavily dependent on its continued participation in the program. Certain employees of Crescent Bay are currently represented by a labor organization but no collective bargaining agreement has been reached between the labor organization and the represented employees. Crescent Bay expects to incur expenditures for services provided by legal counsel as to its rights under the National Labor Relations Act if no agreement can be reached and how to communicate to its employees, through supervisors and other management personnel, or otherwise. Such communication will likely involve supervisors and other management employees who will need education and training and will need to be paid for these activities. The creation and distribution of print and other materials may also be necessary. Based upon its heavy reliance on the Medi-Cal program and the prohibitions of AB 1889, it will likely be unable to take any of these protected actions. In addition, Crescent Bay will be required to expend significant financial resources to attempt to comply with the provisions of AB 1889. It will also be required to spend significant monies to attempt to comply with the certification and reporting

requirements of AB 1889.

22. Zilaco, Inc. is the holder of a valid license issued by the DHS to operate the 46 bed SNF known as CherryLee Lodge Sanitarium in El Monte, California ("CherryLee"). CherryLee currently participates in the Medi-Cal program and is heavily dependent on the continued participation in the program. In particular, approximately 90% of CherryLee's revenue is received from reimbursement provided through the Medi-Cal program. Certain employees are currently represented by a labor organization. However, some of the represented employees are seeking the decertification of the labor organization and have circulated a petition amongst themselves. CherryLee requires legal advice as to its legal rights under the National Labor Relations Act but, because of its heavy reliance on the Med-Cal program and the prohibitions of AB 1889, cannot obtain such advice. It likewise needs to communicate with its employees and will need to utilize supervisors and other management personnel to do so. It may also need to create and distribute print or other materials for this purpose. As with legal advice, it may be unable to take any of these protected activities. If CherryLee could take any of these actions, it would also incur significant expense in attempting to comply with the provisions of AB 1889 and its certification and reporting requirements.

23. Zilaco is the holder of a valid license issued by the DHS to operate the 59 bed SNF known as El Monte Care Center located in El Monte, California ("El Monte"). El Monte currently participates in the Medi-Cal program and is heavily dependent on the continued participation in the

program. In particular, approximately 88% of El Monte's revenue is received from reimbursement provided through the Medi-Cal program. Certain employees are currently represented by a labor organization. However, some of the represented employees are seeking the decertification of the labor organization. El Monte requires legal advice as to its legal rights under the National Labor Relations Act but, because of its heavy reliance on the Medi-Cal program and the prohibitions of AB 1889, cannot obtain such advice. It likewise has a need to communicate with its employees and has a need to utilize supervisors and other management personnel and may need to create and distribute print or other materials for this purpose. However, El Monte may be unable to participate in any of these protected activities. If it could take any of these actions, El Monte will be required to expend significant financial resources to attempt to comply with the provisions of AB 1889 and its certification and reporting requirements.

24. Del Rio is the holder of a valid license issued by the DHS to operate two facilities known as Del Rio Convalescent, a 99 bed SNF in Bell Gardens, California and Del Rio Gardens Care Center ("Del Rio Gardens"), and 84 bed SNF also located in Bell Gardens. Both facilities participate in the Medi-Cal program and are heavily dependent on their continued participation in the program. They have faced, are currently facing and/or will likely face union organizing and/or decertification activities. As a result of AB 1889, these plaintiffs' constitutional and statutory rights are presently being chilled, impaired and impermissibly interfered with. Further,

attempts at compliance with AB 1889 will require significant expenditures.

25. Beverly Health and Rehabilitation Services, Inc. is the holder of a valid license issued by the DHS to operate the 76 bed SNF known as Beverly Manor in Costa Mesa, California ("Beverly Manor"). It has faced, is currently facing and/or will likely face union organizing and/or decertification activities. As a result of AB 1889, this plaintiff's constitutional and statutory rights are presently being chilled, impaired and impermissibly interfered with. Further, attempts at compliance with AB 1889 will require significant expenditures.

26. The Internext Group ("Internext") holds valid licenses issued by the DHS to operate two facilities know as Lutheran Health Facility, a 50 bed SNF in Alhambra, California ("Lutheran") and Villa Gardens Health Care Unit, a 54 bed SNF in Pasadena, California ("Villa Gardens"). Both facilities participate in the Medi-Cal program and are heavily dependent on their continued participation in the program. Based on recent union organizing activity over the last 15 to 18 months at both Lutheran and Villa Gardens, both facilities expect to make expenditures subject to the prohibitions of AB 1889. As a result of AB 1889, these plaintiffs' constitutional and statutory rights are presently being chilled, impaired and impermissibly interfered with. Further, attempts at compliance with AB 1889 will require significant expenditures. The Attorney General is charged under AB 1889 with administering and enforcing its provisions.

27. The DHS is the single state agency designated by the State of California for the purpose

of administering the Medi-Cal program. The Medi-Cal program is a joint state-federal program established by the federal government to provide health services, including long term care services to poor and needy individuals who qualify under certain state and federal requirements. DHS implements the federal certification requirements set forth in 42 U.S.C. Section 1395 *et seq.* and 42 C. F. R. Sections 483.1 *et seq.* (1991) in order to determine whether health facilities qualify for participation in the Medi-Cal program based upon the quality of care provided to their residents. It also evaluates whether facilities qualify for licensure under state quality of care requirements. It also establishes facility reimbursement for the purposes of the Medi-Cal program through specifying cost reporting, rate setting and auditing methodologies.

28. Frank G. Vanacore is the Chief of the Audit Review and Analysis Section of the DHS and is responsible for sending and processing certification forms for compliance with the provisions of AB 1889 and recommending that facilities be terminated from the Medi-Cal program based upon their failure to comply with the certification requirement set forth in AB 1889.

29. Diana M. Bontá, R.N., Dr., P.H. is the Director of the California Department of Health Services, the responsible state official for the activities of the DHS. Any decision to terminate a health facility from the Medi-Cal program would be made and carried out by and under the authority of the Director.

30. Plaintiffs are unaware of the names or identities of Does I through 10.

IV. FACTS

31. AB 1889 is the successor to remarkably similar legislation (AB 442) which was passed by the Legislature but vetoed by the Governor in 1999, who cited as his reasons for vetoing AB 442:

> This legislation has the potential to impose an unreasonable burden on businesses in that they would have to maintain minutely-detailed records to track goods, services and funds received from the State in order to avoid violating the provisions contained therein. In addition, in the absence of a verified complaint, it would be extremely difficult, if not impossible, to determine the accuracy and truthfulness of any report or fund utilization submitted by an employer.
>
> Finally, AB 442 also has the potential to significantly increase employers' litigation costs by providing countless opportunities for disgruntled employees to file civil actions merely in an effort to harass employers.
>
> Governor Gray Davis September 28, 1999 veto letter to California Assembly. (A true and correct copy is attached hereto as Exhibit B.)

32. The Governor signed AB 1889 into law on September 28, 2000.

33. Under AB 1889, State contractors and recipients of State funds are prohibited from incurring costs "to assist, promote, or deter union organizing", unless they establish costly accounting procedures to attempt to document the segregation of funds so that no State funds contribute to the

prohibited activity. Cal. Govt. Code § 16645.1(a) and (b), 16645.2(a) and (b). Moreover, State contractors are required to provide proof of such accounting upon request by the Attorney General. See id. Violators are assessed treble damages—the amount allegedly improperly expended, plus a civil penalty of double that amount. *See* Cal. Gov't Code §§ 16645.1(c), 16645.2(d). Furthermore, State contractors may not assist, promote, or deter union organizing by employees who are performing work on a service contract for the State or State agency, regardless of whether the employer does so with other sources. *See* Cal. Gov't Code § 16645.3(a). Penalties are assessed at $1,000 per employee per violation. An employer who conducts business on State property pursuant to a contract or lease may not use that property to hold a meeting with any employees or supervisors if the purpose is to assist, promote, or deter union organizing. *See* Cal. Gov't Code § 16645.5(a). Violators are assessed a civil penalty of $1,000 per employee per meeting. *See* Cal. Gov't Code § 16645.5(b). AB 1889 further prohibits "legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning, or coordination of, or carrying out, an activity to assist, promote, or deter union organizing." *See* Cal. Gov't Code § 16645.6(a). AB 1889 further prohibits private employers which receive in excess of $50,000 pursuant to state contracts and $10,000 pursuant to state programs from using state funds to assist, promote, or deter union organizing. Cal. Gov't Code § 16645.4 and 16645.7. Public employers which receive state funds are also prohibited from using state funds to assist, promote or deter unionization, and public officials who knowingly authorize an

expenditure which violates that prohibition are personally liable for the expenditures. Cal. Gov't Code § 16646.6. However, AB 1889 does not prohibit activities performed, or expenses incurred, in connection with addressing a grievance or negotiating or administering a collective bargaining agreement. Cal. Gov't Code § 16647. None of these provisions address the quality or manner of providing services. Rather, they restrict employers' expenditures, and therefore any activity, to engage in even non-coercive speech, thus, requiring employer neutrality toward unionization and to forfeit rights they have under Federal law.

34. In marked contrast, AB 1889 explicitly allows an employer to allow unions access to the employer's facilities, including those leased from the State; and it specifically permits an employer to voluntarily enter into an agreement with a union recognizing the union as the exclusive representative of its employees. *See* Cal. Gov't Code § 16647.

35. Beginning March 1, 2002, the DHS Services Audit Division began sending out a letter requiri g that SNFs and ICFs certify that they will comply with AB 1889, specifically with California Government Code Section 16645.7, or forfeit their right to participate in, and receive funds from, the Medi-Cal program. Recipients of this letter were given only forty-five days from the letter's date, February 28, 2002, or until April 15, 2002, to respond. (A true and correct copy of this letter is attached hereto as Exhibit C.) On March 15, 2002, the DHS subsequently sent the identical letters and certification demands to ICF-DDs participating in the Medi-Cal program. (A true and correct copy of the

letter is attached hereto as Exhibit D.) Based upon statements made by defendant Vanacore and other authorized DHS representatives, plaintiffs are informed and, therefore, believe that identical letters and certification demands will be sent to acute care hospitals participating in the Medi-Cal program.

V. CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

36. AB 1889 is unconstitutional under both the United States and California Constitutions in the following particulars:

a. AB 1889 violates the Fourteenth Amendment to the United States Constitution which protects the freedom of speech guarantees found in the First Amendment to the United States Constitution and Article I, Section 2(a) of the California Constitution in ways that include, but are not limited to: (1) engaging in content based discrimination by allowing State funds and State property to be used for expression and other activities to promote unionization (by unions and by employers complicit in extending recognition to unions without employee free choice elections), while repressing expression by employers concerning the merits of unionization; (2) requiring State contractors, grantees of State funds, State program participants and lessees of State property to relinquish their freedom of speech rights as a

condition of entering into State service contracts, receiving State monies, participating in State programs and leasing State land; (3) prohibiting public employers and public officials from exercising their constitutional rights to engage in non-neutral speech concerning unionization; (4) exacting a penalty for the exercise of constitutional rights; (5) placing economic and administrative burdens on those who exercise constitutional rights by requiring expensive and onerous record keeping requirements so as to show that constitutionally protected activities were not funded by State funds; (6) being so vague as to chill the exercise of protected free speech rights; and (7) imposing a prior content based restraint on constitutionally protected expressions.

b. AB 1889 violates the Equal Protection Clause guarantees of the Fourteenth Amendment of the United States Constitution and Article I, Section 7(a) of the California Constitution in ways that include, but are not limited to: (1) favoring unions wishing to advance their cause with employees while requiring State contractors, grantees, program participants, public employers, public officials and lessees questioning unionization to remain silent and forego free speech and NLRA rights during union organizing drives and elections; (2) favoring employers who recognize

unions without elections over employers who do not; (3) treating differently all California employers who lease, contract with, or receive money from the State than those employers who do not fit within those categories, thus allowing one group constitutional and NLRA rights, while denying the other group theirs; and (4) denying State contractors, fund recipients, program participants, public employers, public officials and lessees• the right to consult with and be represented by legal counsel.

c. AB 1889 violates the Due Process Clause guarantees of the Fourteenth Amendment of the United States Constitution and Article I, Section 7(a) of the California Constitution in ways that include, but are not limited to denying State contractors, fund recipients, program participants and lessees the, right to consult with and be represented by legal counsel.

37. AB 1889 is preempted by the NLRA, including preemption under 8(c) of the NLRA which states, "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit." 29 U.S.C. Section 158(c). AB 1889 is preempted under 8(c) of the NLRA pursuant to the *Garmon* preemption under *San Diego*

Bldg. Trades Council v. Garmon, 359 U.S. 236, 79 S. Ct. 773, L. Ed. 2d 775 (1959), in that AB 1889 purports to frustrate or prohibit conduct permitted and rights guaranteed to employers under the NLRA. AB 1889 is also preempted under the NLRA pursuant to the *Machinists* preemption under *International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S. Ct. 2548, 49 L. Ed. 2d 396 (1976), in that it purports to regulate areas Congress intentionally left to be controlled by the free play of economic forces.

38. AB 1889 is preempted by the LMRDA, which comprehensively regulates the reports that employers, labor relations consultants, labor organizations, and officers and employees of labor organizations must make to the public regarding labor relations issues. The LMRDA expressly exempts employers from the very record keeping and reporting obligations which are required under AB 1889.

39. AB 1889 is preempted by the Medicare Act and the Medicaid Act, which regulates provider cost reporting and reimbursement, and so comprehensively occupies the field with its complex regulatory system demonstrating that Congress left no room for the states to supplement it. AB 1889 violates the provisions of the State Plan, Medicaid Act and the Medicare Act by: (a) prohibiting facilities from spending monies for specified purposes when the State Plan allows facilities to report certain costs for the same purposes in establishing Medi-Cal reimbursement rates and (b) making the Office of the Attorney General responsible for its administration and enforcement when the DHS is the single state

agency designated for the administration of the Medi-Cal program.

40. Without a declaratory judgment and an injunction enjoining enforcement of AB 1889, Plaintiffs and their members will be deprived of the rights sought to be enforced by this Complaint.

41. Plaintiffs have no adequate remedy at law as to the matters for which they seek an injunction and are now enduring, and in the future will endure.

WHEREFORE, Plaintiffs hereby request that the Court enter a judgment:

a. Declaring that:

(i) AB 1889 is unconstitutional under the United States Constitution and the California Constitution;

(ii) AB 1889 is preempted by the NLRA, the LMRDA, and the Medicare Act;

(iii) AB 1889 is unenforceable by any party, including, but not limited to the State of California and its subdivisions, the California Department of Health Services, the Attorney General of California, and private citizens as taxpayers.

b. Temporarily, preliminarily and permanently enjoining the State of California and all of its subdivisions and the Attorney General and all others acting in concert with them, and each of them, from:

(i) enforcing any of the provisions of AB 1889;

(ii) requiring Medi-Cal providers to

certify that they will comply with the provisions of AB 1889; and

(iii) terminating a Medi-Cal providers from the Medi-Cal program based upon failure to comply with the certification requirement or any other portion of AB 1889.

c. Granting such further relief to Plaintiffs as may be just and proper under the circumstances.

Dated: April 10, 2002

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case No. SA CV02377 GLT (ANx)

The Chamber of Commerce of the United States, California Chamber of Commerce, Employers Group, California Manufacturers and Technology Association, California Association of Health Facilities, California Association of Homes & Services for the Aging, California Health Association, Bettec Corporation, Marksherm Corporation, Zilaco, Inc., Zilaco, Del Rio Healthcare, Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor – Costa Mesa, Internext Group,

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and Does 1 through 10,

Defendants.

DECLARATION OF NANCY ARMENTROUT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Nancy Armentrout, declare and state as follows:

1. I am the Director of Legislative Affairs for the California Association of Health Facilities ("CAHF"), a non-profit association representing long-term care providers in California. I have personal knowledge of the facts recited herein, and if called to testify concerning them under oath. I could and would competently testify thereto.

2. More specifically, CAHF is an association representing approximately 1,600 licensed skilled nursing facilities ("SNFs"), intermediate care facilities ("ICFs") and intermediate care for the developmentally disabled facilities ("ICF-DDs") in the State of California (collectively, "long-term care facilities"). While CAHF represents member organizations that are organized as both "for profit" and "not for profit" entities, the majority of its membership operates long-term care facilities organized as "for profit" entities. CAHF members employ approximately 72,000 employees.

3. CAHF exists to advocate on behalf of its member long-term care facilities before all relevant governmental bodies, including the executive, legislative and judicial branches of the state and federal governments in order to ensure that the interests of such facilities are advanced and not impaired in all material respects. One of the fundamental purposes of CAHF is to protect the interests of its member facilities in their role as

participants in the Medicaid program (known as Medi-Cal in California), including ensuring that governmental action involving the Medi-Cal program is consistent with the California State Medicaid Plan ("State Plan") and federal Medicaid laws and regulations. Such governmental action includes the application of federal and state requirements involving the establishment of facility reimbursement under Medi-Cal (such as cost reporting, rate setting and auditing) as well as the quality of care to be provided by facilities in order to participate in the Medi-Cal program. Another fundamental purpose of CAHF is to protect members in their roles as employers, including ensuring that the public policy defining the relations between member facilities and their employees remains consistent with the rights and privileges secured by the United States and California Constitutions, the National Labor Relations Act and other federal and state labor laws and are not compromised or violated in any manner. The specific issues raised in this Complaint and the interests underlying the issues are entirely consistent with CAHF's mission and purpose as well as the services provided to its members.

4. Not only do the vast majority of CAHF's members receive funds in excess of $10,000 through the Medi-Cal program in each calendar year (in the form of reimbursement for services provided to beneficiaries), they are also heavily dependent on the revenue provided through this program. Numerous CAHF member facilities (including SNFs, ICFs and ICF-DDs) obtain as much as 75% to 100% of their revenue through the Medi-Cal program.

5. More specifically, the vast majority of

CAHF's SNF and ICF members participate in the Medi-Cal program and approximately 65% of their residents are typically beneficiaries of that program. Based upon the high percentage of Medi-Cal residents typically residing at the facility, approximately 60% of the facility's revenue is also typically dependent on the Medi-Cal program.

6. Further the vast majority of CAHF's ICF-DD members participate in the Medi-Cal program, 100% of their residents are beneficiaries of that program, and 100% of their revenue is also dependent on the Medi-Cal program.

7. If CAHF's members withdrew or were terminated from the Medi-Cal program, they would not be able to survive financially for anything more than a brief period of time. If closed, members would be required to transfer all of their dependent residents. In addition, after withdrawing from the Medi-Cal program, these facilities would also be required, up to the point of closure, to continue to provide carefree of charge to existing Medi-Cal beneficiaries residing at the facility as well as all SNF and ICF residents eligible for the Medi-Cal program once they formally enrolled in the program.

8. Based upon information received by CAHF from its members, the restrictions on the use of such funds by AB 1889 has had and will continue to have dramatic effects on member facilities' abilities to exercise their protected Constitutional and statutory rights. For example, some of these member facilities have experienced, are experiencing and will likely experience organizing activities of labor organizations which have led or may lead to a union representation election. Others have

experienced, are experiencing and will likely experience activity undertaken by employees represented by a labor organization to decertify the union which has led to or may lead to an election.

9. Facilities faced with either of the above situations regularly pay legal counsel or other professional consultants to advise these employers of their legal rights under the National Labor Relations Act and to assist them with union organizing drives and election campaigns in an effort to inform employees of the potential drawbacks of membership in a labor organization and benefits of maintaining or regaining a direct relationship with management. Some of these employers pay their supervisory and management employees to assist in communicating to employees the potential drawbacks of membership in a labor organization and the benefits of maintaining or regarding a direct relationship with management.

10. On or about February 28, 2002, DHS sent via mail to CAHF's members operating SNFs and ICFs demanding that they certify in writing Within 45 days that they would comply with the provisions of AB 1889, a law requiring that no state funds be spent on activities which are deemed to "assist, promote or deter union organizing activity." (A true and correct copy of this certification form is attached as Exhibit 1.) That form required that SNFs and ICFs certify that "no California State Funds received for this employer's participation in a DHS program will be used to assist, promote or deter union organizing." DHS indicated in this demand that the failure to complete and return the form "may result in the removal of the facility from the Medi-Cal

program."

11. On or about March 15, 2002, DHS sent via mail to CAHF's members operating ICF-DDs demanding that they certify in writing within 45 days that they would comply with the provisions of AB 1889. (A true and correct copy of this certification form is attached as Exhibit 2.) That form required that ICF-DDs certify that "no California State Funds received for this employer's participation in a DHS program will be used to assist, promote or deter union organizing." DHS indicated in this demand that the failure to complete and return the form "may result in the removal of the facility from the Medi-Cal program."

12. CAHF members took a variety of steps in response to these demands. Some returned the form with the certification required along with a statement that: "I am certifying to the matters stated above under severe duress (i.e., threat of termination from the Medi-Cal program) and despite my belief that the requirements of AB 1889 (Government Code~ § 16645-16649) are extremely burdensome, if not impossible, to comply with and that they violate my rights under federal and state law, as well as the United States and California Constitutions. I therefore submit this certification under protest and hereby reserve my rights to challenge the legality and/or applicability of Government Code § 16645-16649." Others did not return the form and others would only certify that: "The requirements that this Certification be filed is subject to the lawsuit, The Chamber of Commerce of the United States, et al. v. Bill Lockyer, et al., which bears number SAC V02-377 DOC (ANx), in the United States District Court

for the Central District of California (filed April Il, 2002). If appropriate, a further filing will be made when the decision in that case becomes final."

13. Based upon facilities' dependence on continued participation in the Medi-Cal program to survive, most had no option but to return the certification form under protest. In deciding whether to return the form, they had to weigh the financial survival of the facility and well-being of their residents against being deprived of their protections under the United States Constitution and federal labor laws to engage in non-threatening and non-coercive speech and activities in response to union organizing activities. Most chose financial survival. However, some nevertheless refused to provide certification in the form proposed by DHS.

14. On or about April 26, 2002, DHS began sending follow-up demands to those SNFs and ICFs which it alleged had not provided completed certification forms. This demand further stated the "[failure to reform the completed certification to the Department within 15 days from the date of this letter may result in the Department's removal from the program...until the certification is completed and filed." (A true and correct copy of this follow-up demand is attached hereto as Exhibit 3.)

15. Based upon communications that I have had with the Audits Section of the DHS, I understand that such follow-up letters will also be forthcoming to ICF-DDs which DHS alleges have not been completed and returned.

16. It is unclear how many members of CAT-IF will ultimately not return the completed DHS certification form. However, DHS Chief Legal

Counsel, Barbara Yonemura, stated to me that DHS will terminate non-compliant providers from the Medi-Cal program.

17. Based upon the substantial percentage of revenue received by the facilities from the Medi-Cal program, unless they have significant access to non-state funds, they are largely unable to afford to pay for any of the activities deemed to be prohibited by AB 1889 from non-state funds. As a result, they are effectively prohibited from exercising their rights to speak and act freely under the United States Constitution and federal labor laws.

18. For those providers which could afford to spend any resources on these "prohibited activities," they would nevertheless need to comply with the accounting and record-keeping requirements of AB 1889. In doing so, facilities and companies (whether small or large) would have to fundamentally and substantially alter their financial accounting and record-keeping practices and procedures. Once again, the burdens and costs associated with such a change would likely be so extreme that it would be neither affordable nor workable.

19. For example, even for multi-state providers, state funds from any number of states are typically swept from local bank accounts into centralized clearing accounts, from which outside attorneys and consultants and employee salaries are paid. Under these circumstances, in order to comply with AB 1889, such providers would have to separately account for Medi-Cal monies from all other revenues (i.e., Medicare, HMO, insurers and private payment from individuals) within local bank

accounts in California as well as within centralized company accounts. Further, it may not even be possible for providers to fully comply with AB 1889 under these circumstances, particularly with respect to the payment of employee salaries and benefits, when they cannot tell - or ultimately control - if or when any employee may decide to engage in "prohibited activities" of which they are unaware.

20. The funds that CAHF's members receive from the Medi-Cal program provide reimbursement for services already provided to their frail and dependent residents.

21. CAHF members have been the subject of enforcement efforts under AB 1889 by both the Service Employee International Union ("SEIU") and the Attorney General's office. On May 18, 2001, Attorney General Bill Lockyer sent an accounting demand to AB Crispino and Company, Inc. demanding that AB Crispino and Company, Inc. provide records to show that it was in compliance with AB 1889. (A true and correct copy of the demand is attached as Exhibit 4 hereto.) On May 23, 2001, the SEIU filed an action in Los Angeles County Superior Court against AB Crispino and Company, Inc. seeking to enforce the provisions of AB 1889 over approximately $900 in expenditures. (A true and correct copy of the complaint is attached as Exhibit 5 hereto.) After settling the dispute over the $900 expenditures, the SEIU demanded approximately $27,000 in legal fees. Ultimately, that issue was settled for $13,000.

22. On May 18, 2001, Attorney General Bill Lockyer sent an accounting demand to Fountain View, Inc. demanding that Fountain View, Inc.

provide records to show that it was in compliance with AB 1889. (A true and correct copy of the demand is attached as Exhibit 6 hereto.) Attorney General Lockyer subsequently filed an action against Fountain View, Inc. in Los Angeles County Superior Court, which seeks the enforcement of AB 1889 through compelling the member to produce financial and accounting records demonstrating that the expenditures associated with alleged "prohibited activities" under AB 1889 were paid for with non-state funds. (A true and correct copy of the Complaint is attached as Exhibit 7 hereto.) That action is still pending.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 22 day of May, 2002, at Sacramento, California.

/s/

Nancy Armentrout

May 18, 2001

AB Crispino and Company, Inc.
d/b/a Santa Monica Convalescent Centers
2250 29th Street
Santa Monica, CA 90405

RE: Government Code section 16645.7

Dear Sirs and Mesdames:

California Government Code Section 16645.7, effective January 1, 2001, provides that a private employer receiving state funds in excess of $10,000 per calendar year on account of its participating in a state program "shall not use any of those funds to assist, promote, or deter union organizing." Section 16645.7, subdivision (c) provides that any private employer subject to this statute who makes expenditures to assist, promote, or deter union organizing must maintain records sufficient to show that no state funds were used for these expenditures. The Attorney General of California is charged with enforcement of the provisions of this statute and any employer subject to this law must provide these records to the Attorney General upon request.

The Santa Monica Convalescent Centers receive over $10,000 per calendar year as a result of their participation in the state's Medi-Cal program. This office has received a written notice pursuant to Government Code section 16645.8, subdivision (b) alleging that, within the past several months, these care facilities have made expenditures to deter union organizing.

Specifically, it is alleged that on February 14,

2001 employees at these care facilities were given a memorandum from Arthur Crispino intended to influence their decision whether to join a union. In addition, it appears that, during the month of February 2001, employees at these facilities were required to attend meetings on this subject conducted by Mr. Crispino, Ester Cuellar, Octavio Trejo, and other supervisory personnel and that, subsequent to these group meetings, supervisory personnel initiated further meetings and discussions with individual employees.

On this basis, it appears that AB Crispino and Company made expenditures to deter union organizing within the meaning of section 16645.7 after January 1, 2001. These expenditures would appear to include, but not be limited to:

-- Any and all fees and expenses paid to consultants for advice on influencing employees' decision whether or not to join a labor union;

-- The salaries of Mr. Crispino, Ms. Cuellar, Mr. Trejo and of any and all other supervisory personnel during times spent in attending the meetings described above, as well as times spent in preparation, planning, and coordination of these meetings;

-- The salaries of any and all employees of the Santa Monica Convalescent Care Centers who received compensation for time spent attending such meeting; and

-- Any costs of printing, duplicating, mailing, or distribution of any documents given to Santa Monica employees at any such meetings.

Please, therefore, provide no later than June 4, 2001, "records sufficient to that no state funds were

used" for these expenditures. In particular, please provide records sufficient to show the source of funding for these expenditures and sufficient to show that the Medi-Cal program did not reimburse AB Crispino and Company for any time spent by Mr. Crispino or any other employee attending or planning for these meetings.

Thank you for your prompt attention to this matter. I look forward to receiving your response.

Sincerely,

/s/
THOMAS P. REILLY
Deputy Attorney General

For BILL LOCKYER
Attorney General

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES

WEST DISTRICT

NO. SC 066413

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 399, AND SHARIE HAILEY,

Plaintiffs,

v.

AB CRISPINO & COMPANY, INC. d/b/a/ SANTA MONICA CONVALESCENT CENTERS,

Defendants

COMPLAINT FOR CIVIL PENALTIES, DAMAGES, RESTITUTION, AND INJUNCTIVE AND OTHER RELIEF

1. This is an action against defendant AB CRISPINO & COMPANY, INC. which unlawfully has used State funds to deter union organizing by its employees, and unlawfully has failed to maintain records sufficient to show that State funds were not so misused. Defendants activities violate Government Code § 16645.7 and also constitute unfair and unlawful business practices under Business and Professions Code § 17200 *et seq.* Plaintiffs bring this action on their own behalf (and in the case of SEIU LOCAL 399. on behalf of its members), on behalf of the people of the State of California, and in the interest of the general public, to remedy and halt Defendant's misuse of State funds

2. Plaintiff SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 399 ("SEIU LOCAL 399") is an unincorporated labor organization, headquartered in Los Angeles. California, whose members are employed in hospitals, nursing homes, and other health care facilities throughout Los Angeles County. Among SEIU LOCAL 399's purposes is advocacy on behalf of the economic, social, and other interests of its members and those persons it seeks to organize. Both SEIU LOCAL 399 and its members pay State taxes. SEIU LOCAL 399 brings this action on its own behalf, on behalf of its members, on behalf of the people of the State of California pursuant to Government Code § 16645.8, and in the interest of the general public pursuant to Business and Professions Code § 17204.

3. Plaintiff SHARIE HAILEY ("HAILEY") is a member of the Executive Board of SEIU LOCAL 399, is a nursing home worker, and is a resident of Los Angeles, California. Halley is a State taxpayer. She brings this action on her own behalf, on behalf of the people of the State of California pursuant to Government Code § 16645.8, and in the interest of the general public pursuant to Business and Professions Code § 17204.

4. Defendant AR CRISPINO & COMPANY, INC. (hereinafter "CRISPINO") is a California corporation operating skilled nursing facilities with its headquarters in Santa Monica, California. Plaintiffs are informed and believe, and on that basis allege, that CRISPINO owns and operates two jointly-managed skilled nursing facilities called the Santa Monica Convalescent Centers, which are located at 2828 West Pice Blvd., Santa Monica, CA

90405, and at 2250 29th Street, Santa Monica, CA 90405.

5. This Court has jurisdiction over all causes of action herein pursuant to the California Constitution, Article VI § 10, because this case is a cause not given by statute to other trial courts.

6. Venue for this action properly lies in the Superior Court of the State of California in and for Los Angeles County. SEIU LOCAL 399 is headquartered in Los Angeles County HAILEY resides in Los Angeles County. Defendant is headquartered and has its principal place of business in Los Angeles County. Some or all of the actions alleged herein occurred within Los Angeles County.

7. Plaintiffs provided 60 days advance notice to the Attorney General before bringing this lawsuit, pursuant to California Government Code § 16645.8.

FIRST CAUSE OF ACTION FOR ILLEGALLY USING STATE FUNDS TO ASSIST, PROMOTE, OR DETER UNION ORGANIZING (Government Code § 16645.7(a))

8. The allegations of paragraphs 1 to 7 are realleged and incorporated herein by reference.

9. Defendant is a private business or organization that operates the Santa Monica Convalescent Centers, located at 2828 West Pico Blvd., Santa Monica, CA 90405, and at 2250 29th Street, Santa Monica, CA 90405, collectively referred to as the "CENTERS." Defendant employs more than one person in California.

10. The CENTERS are participants in the State Medi-Cal program. The CENTERS receive a

majority of their total annual income from the State Medi-Cal program.

11. Since January 1, 2001, Defendant has received in excess of $10,000 in money drawn from the State Treasury and/or a special or trust fund of the State on account of Defendant's participation in the State's Medi-Cal program. Plaintiffs are informed and believe and on that basis allege, that Defendant will receive in excess of $10,000 in money drawn from the State Treasury and/or a special or trust fund of the State in each subsequent calendar year in which Defendant continues to own the CENTERS.

12. Beginning in or about February 2001, Defendant made expenditures to deter union organizing by SEIU LOCAL 399 of employees of the CENTERS. Plaintiffs are informed and believe, and on that basis allege, that these expenditures included legal fees, consulting fees, and/or salaries of supervisors and/or employees, incurred to research. prepare, plan, coordinate. and/or carry our a campaign to influence the decisions of the CENTERS' employees about whether to support SEIU LOCAL 399.

13. Plaintiffs are informed and believe, and on that basis allege, that some or all of the expenditures to deter union organizing described in the preceding paragraph were made in whole or in part with money drawn from the State Treasury and/or a special at trust fund of the State and received by CRISPINO on account of its participation in the State's Medi-Cal program.

14. Defendant's acts alleged herein violate Government Code § 16645.7(a).

15. Plaintiffs are informed and believe, and on that basis allege, that CRISPINO co-mingled State funds and non-State funds in common accounts, and used co-mingled State funds for the expenditures to deter union organizing alleged herein, in violation of Government Code § 16645.7(a) and 16646.

16. Plaintiffs are informed and believe, and on that basis allege, that Defendant will, unless enjoined, continue to engage in the illegal acts complained of herein.

SECOND CAUSE OF ACTION FOR FAILURE TO MAINTAIN RECORDS SUFFICIENT TO SHOW THAT NO STATE FUNDS WERE USED TO ASSIST, PROMOTE OR DETER UNION ORGANIZING
(Government Code § 16645.7(c))

17. The allegations of paragraphs 1 to 16 are realleged and incorporated herein by reference.

18. Plaintiffs are informed and believe, and on that basis allege, that, since February 2001, Defendant failed to maintain records sufficient to show that it has used no State funds to assist, promote, or deter union organizing.

19. Defendant's acts alleged heroin violate Government Code § 16645.7(c).

20. Plaintiffs are informed and believe, and on that basis allege, that Defendant will, unless enjoined, continue to engage in the illegal acts complained of herein.

THIRD CAUSE OF ACTION FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES (Business & Professions Code § 17200 *et seq.*)

21. The allegations of paragraphs 1 to 20 are realleged and incorporated herein by reference.

22. California Business and Professions Code § 17200 provides that unfair competition shall mean and include any "unlawful [or] unfair . . . business act or practice."

23. As alleged above, Defendant, in the course of doing business, has violated Government Code § 16645.7(a) by using money drawn from the State Treasury and/or a special or trust fund of the State to assist, promote, deter union organizing.

24. Defendant's actions alleged herein constitute *per se* unlawful business practices in violation of California Business & Professions Code § 17200 *et seq.*

25. Plaintiffs are informed and believe, and on that basis allege, that Defendant will, unless, enjoined, continue to engage in the unlawful business practices complained of herein.

FOURTH CAUSE OF ACTION FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES (Business & Professions Code § 17200 *et seq.*)

26. The allegations of paragraphs 1 to 25 are realleged and incorporated herein by reference.

27. California Business and Professions Code § 17200 provides that unfair competition shall mean and include any "unlawful or unfair business act or practice."

28. As alleged above, Defendant, in the course of doing business, has violated Government Code § 16645.1(c), by failing to maintain records sufficient to show that it has used no money drawn from the State Treasury and/or a special or trust fund of the State to assist, promote, deter union organizing.

29. Defendant's actions alleged herein constitute *per se* unlawful business practices in violation of California Business & Professions Code §§ 17200 *et seq.*

30. Plaintiffs are informed and believe, and on that basis allege that Defendant will unless enjoined, continued to engage in the unlawful business practices complained of herein.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

1. An injunction requiring Defendant to cease and desist from using any State funds to assist, promote, or deter union organizing;

2. An order requiring Defendant to provide an accounting of its expenditures of State funds so as to show the amount of State funds that were used to assist, promote, or deter union organizing;

3. A civil penalty payable to the State of California equal to twice the sum of all funds expended in violation of Government Code § 16645.7(a) and (c);

4. Damages payable to the State of California of all funds expended in violation, of Government Code § 16645,7(a) and (c);

5. Restitution to the State of California and all other appropriate equitable relief authorized by Business & Professions Code § 17203;

6. Reasonable attorneys' fees, investigative expenses, and costs of suit;

7. Such other and further relief as the Court deems equitable, just, and proper.

Date: May 23, 2001

By: /s/

Michael E. Wall

Attorneys for Plaintiffs

May 18, 2001

Fountain View, Inc.
d/b/a Baycrest Care Center
3750 Garnet Avenue
Torrance, CA 90503

RE: Government Code section 16645.7

Dear Sirs and Madams:

California Government Code section 16645.7, effective January 1, 2001, provides that a private employer receiving state funds in excess of $10,000 per calendar year on account of its participation in a state program "shall not use any of those funds to assist, promote, or deter union organizing." Section 16645.7, subdivision (c) provides that any private employer subject to this statute who makes expenditures to assist, promote, or deter union organizing must maintain records sufficient to show that no state funds were used for those expenditures. The Attorney General of California is charged with enforcement of the provisions of this statute and any employer subject to this law must provide these records to the Attorney General upon request.

Baycrest Care Center receives over $10,000 per calendar year as a result of its participation in the state's Medi-Cal program. This office has received a written notice pursuant to Government Code section 16645.8, subdivision (b) alleging that, within the past several months, Baycrest has made substantial expenditures to deter union organizing.

Specifically, Baycrest appears to have retained the services of Russ Brown Associates to influence its

employees in deciding whether to become members of a labor organization. It also appears that David Acosta and Russell Brown conducted a series of individual and small group meetings on this subject with Baycrest employees throughout the month of March 2001 and that, at one such meeting on March 17, 2001, Baycrest employees were shown videotapes intended to discourage them from joining a union.

On this basis, it appears that Baycrest made expenditures to deter union organizing within the meaning of section 16645.7 after January 1, 2001. These expenditures would appear to include, but not be limited to:

-- Any and all fees and expenses paid to Russ Brown Associates, its employees and contractors;

-- The salaries of any and all Baycrest supervisory personnel during times spent in attending the meetings described above, as well as times spent in preparation, planning, and coordination of these meetings;

-- The salaries of any and all employees of Baycrest who received compensation for time spent attending such meetings; and

-- Any costs of printing, duplicating, mailing, or distribution of any documents given to Baycrest employees at any such meetings.

Please, therefore, provide no later than June 4, 2001, "records sufficient to show that no state funds were used" for these expenditures. In particular, please provide records sufficient to show the source of funding for these expenditures and sufficient to show that the Medi-Cal program did not reimburse Baycrest for any time spent by any Baycrest

employee attending or planning for these meetings.

Thank you for your prompt attention to this matter. I look forward to receiving your response.

Sincerely,

/s

THOMAS P. REILLY
Deputy Attorney General

For BILL LOCKYER
Attorney General

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case No. SA CV02377 GLT (ANX)

The Chamber of Commerce of the United States, California Chamber of Commerce Employers Group, California Healthcare Association, California Manufacturers and Technology Association, California Association of Health Facilities, California Association of Homes & Services for the Aging, Bettec Corporation, Marksherm Corporation, Zilaco, Inc., Zilaco, Del Rio Healthcare, Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor – Costa Mesa, Internext Group,

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and Does 1 through 10,

Defendants.

DECLARATION OF RONALD S. COHEN IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Ronald S. Cohen, declare and state as follows:

1. I am the Executive Director for United Cerebral Palsy ("UCP"), which is a non-profit organization operating 23 Intermediate Care Facilities for Developmentally Disabled ("ICF-DDs") throughout Los Angeles, Ventura, and Santa Barbara counties and serving the needs of developmentally disabled residents. UCP participates in the Medi-Cal program and its reimbursement is comprised of 100% of funds paid for by the state. We also operate 6 adult day care programs, 5 group homes, and service clients in 6 apartment buildings. In total, UCP serves approximately 750 clients per day using its 650 employees. Based upon our participation in the Medi-Cal program and the fact that we receive $10,000 more in each calendar year, we have been told by the Department of Health Services ("DHS") that we are subject to the requirements of AB 1889 through Government Code § 16645.7.

2. Based upon my concern about compliance with the provisions of § 16645.7, on March 28, 2002, 1 wrote to the DHS seeking clarification of certain issues. (A true and correct copy of my March 28, 2002, correspondence to the DHS is attached hereto as Exhibit 1.)

3. Sometime shortly after April 23, 2002, I received a response from the Department of Health Services to my March 28th correspondence. (A true and correct copy of the DHS response is attached hereto as Exhibit 2.)

I declare under penalty of perjury under the laws of the United Slates that the foregoing is true and correct. Executed this 21 day of May, 2002 at

Woodland Hills, California.

/s

Ronald S. Cohen

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case No. SA CV02377 GLT (ANX)

The Chamber of Commerce of the United States, California Chamber of Commerce Employers Group, California Healthcare Association, California Manufacturers and Technology Association, California Association of Health Facilities, California Association of Homes & Services for the Aging, Bettec Corporation, Marksherm Corporation, Zilaco, Inc., Zilaco, Del Rio Healthcare, Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor – Costa Mesa, Internext Group,

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and Does 1 through 10,

Defendants.

DECLARATION OF STEVEN HIGHLAND IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

1. I, Steven Highland declare and state as follows:

2. I am a shareholder in Del Rio Healthcare, Inc., which owns and operates Del Rio Gardens Care Center, a 84-bed skilled nursing facility and Del Rio Convalescent Center, a 99-bed skilled nursing facility, both of which are located in Bell Gardens, California and licensed by the California Department of Health Services, I am also the licensed administrator of Del Rio Gardens. Del Rio Gardens and Del Rio Convalescent currently provide long-term care services to over 180 frail and dependent elderly and debilitated residents. I have personal knowledge of the facts recited herein, and if called upon to testify concerning them under oath, I could and would competently testify thereto.

3. Del Rio Gardens and Del Rio Convalescent participate in the Medi-Cal program, and approximately 82% of Del Rio Gardens residents are beneficiaries of Medi-Cal and 83% of Del Rio Convalescent are beneficiaries of that program. Based upon the high percentage of Medi-Cal residents typically residing at these facilities, approximately 80% of Del Rio Gardens' revenue is dependent on the Medi-Cal program and 81% of Del Rio Convalescent's is dependent on the program.

4. If Del Rio Gardens or Del Rio Convalescent withdrew or was terminated from the Medi-Cal program, they would not be able to survive financially and would likely be forced to cease operations within 1 month. If closed, they would be required to transfer all of their dependent residents. In addition, after withdrawing from the Medi-Cal

program, the facilities would also be required, up to the point of closure, to continue to provide care free of charge to existing Medi-Cal beneficiaries residing at the facilities as well as all residents eligible for the Medi-Cal program once they formally enrolled in the program.

5. In March, 2002, Del Rio Gardens and Del Rio Convalescent received demands from the DHS that they would be required to certify in writing that they will comply with the provisions of AB 1889, a law requiring that no state funds be spent on activities which are deemed to "assist, promote and deter union organizing activity." I returned the form with the certification required under protest. (True and correct copies of the forms submitted are attached as Exhibits 1 and 2.)

6. Based upon my facilities' dependence on their continued participation in the Medi-Cal. program to survive, we had no option but to return the certification form under protest In deciding whether to return the form, we had to weigh the financial survival of the facilities and well-being of our residents against being deprived of our protections under the United States Constitution and federal labor laws to engage in non-threatening and non-coercive speech and activities in response to union organizing activities. We chose financial survival.

7. In 2001, representatives from SEIU Local 399 began leafletting our employees at both Del Rio facilities for the purpose of unionizing those employees. Some SEIU representatives even attempted to enter the facilities without permission. As a result, we requested that they confine their

activities to the sidewalks outside the facilities.

8 Since that time, we have communicated with our employees at general meetings that Local 399 might be providing them with written materials and indicated that not everything, if anything, represented in those materials was true. We have also expressed to our employees the viewpoint that becoming a unionized workforce is not in their best interest. We have also discussed with our supervisors that they need to be able to answer employee questions about unionization and express our belief that it is not in the best interests of our employees.

9. Based upon the substantial percentage of revenue received by the facilities from the Medi-Cal program, we are unable to afford to pay for any of the activities deemed to be prohibited by AB 1889 from non-state funds. As a result, we are effectively prohibited from exercising our rights to speak and act freely under the United States Constitution and federal labor law.

10. If we were going to spend any resources on these "prohibited activities," we determined that in order to attempt to comply with the accounting and record-keeping requirements of AB 1889, we would have to fundamentally and substantially alter our financial accounting and record-keeping. Once again, the burden and cost associated with such a change was so extreme that we decided that we could not afford it. However, we are still fearful that it may not even be possible for us to comply with AB 1889, particularly with respect to the payment of employee salaries and benefits, when we cannot tell - or ultimately control if or when any employee may

decide to engage in "prohibited activities" of which we are unaware.

11. The funds that Del Rio Gardens and Del Rio Convalescent receive from the Medi-Cal program provide reimbursement for services already provided to our frail and dependent residents. It is not fair for the state to prohibit us from spending monies received for services provided for any lawful purpose. It is particularly unfair for such prohibitions to cause us to be unable to speak or act freely as guaranteed by the United States Constitution and federal labor laws. It is also particularly unfair to restrict our speech when unions are not restricted in that regard as well.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: May 23, 2002

By: /s/

Steven Highland

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case No. SA CV02377 GLT (ANX)

The Chamber of Commerce of the United States, California Chamber of Commerce Employers Group, California Healthcare Association, California Manufacturers and Technology Association, California Association of Health Facilities, California Association of Homes & Services for the Aging, Bettec Corporation, Marksherm Corporation, Zilaco, Inc., Zilaco, Del Rio Healthcare, Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor – Costa Mesa, Internext Group,

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and Does 1 through 10,

Defendants.

DECLARATION OF MORT SWALES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

1. I, Mort Swales, declare and state as follows:

2. Through my ownership interest in Internext Group, I am the co-President of the Alhambra, a 50-bed skilled nursing facility located in Alhambra, California, and of Villa Gardens Health Care Unit ("Villa Gardens"), a 54-bed skilled nursing facility operating within a 320-resident Continuous Care Retirement Community ("CCRC") located in Pasadena, California, both of which are licensed by the California Department of Health Services. Alhambra and Villa Gardens currently provide skilled nursing services to over 100 frail and dependent elderly and debilitated residents, I have personal knowledge of the facts recited herein, and if called upon to testify concerning them under oath, I could and would competently testify thereto.

3. Alhambra and Villa Gardens participate in the Medi-Cal program. Based upon the participation of Medi-Cal residents at these facilities, a portion of Alhambra's and Villa Gardens' revenue is dependent on continued participation in the Medi-Cal program.

4. If Alhambra or Villa Gardens withdrew or was terminated from the Medi-Cal program, they would be negatively financially impacted by the loss of revenue.

5. In March 2002, Alhambra and Villa Gardens received demands from the DHS that they would be required to certify in writing that they will

comply with the provisions of AB 1889, a law requiring that no State funds be spent on activities which are deemed to "assist, promote and deter union organizing activity." I returned the form with the certification required under protest. (A true and correct copy of the form submitted by Villa Gardens is attached as Exhibit 1.)

6. Based upon my facilities' dependence on their continued participation in the Medi-Cal program to survive, we had no option but to return the certification form under protest. In deciding whether to return the form, we had to weigh the financial survival of the facilities and well-being of our residents against being deprived of our protections under the United States Constitution and federal labor laws to engage in non-threatening and non-coercive speech and activities in response to union organizing activities. We chose financial survival.

7. In 2001, representatives from SEIU Local 399 began leafletting Our employees for the purpose of unionizing the workforces at both the Alhambra and Villa Gardens facilities. While these organizing efforts have not succeeded to date, there is at least one employee at Villa Gardens who consistently expresses his opinion during working hours to other employees that the workplace should be unionized.

8. During both organizing efforts, we utilized outside consultants to train our supervisors and managers as to employer and employee rights and responsibilities under federal labor law, as well as what could be lawfully communicated to employees concerning the potential disadvantages of

unionization. We continue to train our supervisors on these issues twice a year. Department heads also meet regularly to discuss management issues and issues surrounding union organizing are typically part of such discussions.

9. Based upon the revenue received by the facilities from the Medi-Cal program, we are compromised in our ability to afford to pay for any of the activities deemed to be prohibited by AB 1889 from non-state funds. As a result, we are effectively prohibited from exercising our rights to speak and act freely under the United States Constitution and federal labor law.

10. If we were going to spend any resources on these "prohibited activities," we determined that in order to attempt to comply with the accounting and record-keeping requirements of AR 1889, we would have to fundamentally and substantially alter our financial accounting and record-keeping. Once again, the burden and cost associated with such a change was so extreme that we decided that we could not afford it. However, we are still fearful that it may not even be possible for us to comply with AR 1889, particularly with respect to the payment of employee salaries and benefits, when we cannot tell - or ultimately control - if or when any employee may decide to engage in "prohibited activities" of which we are unaware.

11. The funds that Alhambra and Villa Gardens receive from the Medi-Cal program provide reimbursement for services already provided to our frail and dependent residents. It. is not fair for the state to prohibit us front spending monies received for services provided for any lawful purpose. It is

particularly unfair for such prohibitions to cause us to be unable to speak or act freely as guaranteed by the United States Constitution and federal labor laws. It is also particularly unfair to restrict our speech when unions are not restricted in that regard as well.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

By: /s/
Mort Swales

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case No. SA CV02377 GLT (ANX)

The Chamber of Commerce of the United States, California Chamber of Commerce Employers Group, California Healthcare Association, California Manufacturers and Technology Association, California Association of Health Facilities, California Association of Homes & Services for the Aging, Bettec Corporation, Marksherm Corporation, Zilaco, Inc., Zilaco, Del Rio Healthcare, Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor – Costa Mesa, Internext Group,

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and Does 1 through 10,

Defendants.

DECLARATION OF DANIEL ZILAFRO IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

1. I, Daniel Zilafro, declare and state as follows:

2. Through my ownership of Zilaco and Zilaco, Inc., I am the owner/operator of the El Monte Care Center, a 59-bed skilled nursing facility and CherryLee Lodge, a 46-bed skilled nursing facility, both of which are located in El Monte, California and licensed by the California Department of Health Services. El Monte and CherryLee currently provide long-term care services to over 100 frail and dependent elderly and debilitated residents. I have personal knowledge of the facts recited herein, and if called upon to testify concerning them under oath, I could and would competently testify thereto.

3. El Monte and CherryLee participate in the Medi-Cal program, and approximately 95% of El Monte residents are beneficiaries of Medi-Cal and 100% of CherryLee are beneficiaries of that program. Based upon the high percentage of Medi-Cal residents typically residing at these facilities, approximately 90% of El Monte's revenue is dependent on the Medi-Cal program and 100% of CherryLee's is dependent n the program.

4. If El Monte or CherryLee withdrew or was terminated from the Medi-Cal program, they would not be able to survive financially and would likely be forced to cease operations within 1 month. If closed, they would be required to transfer all of their dependent residents. In addition, after withdrawing from the Medi-Cal program, the facilities would also be required, up to the point of closure, to continue to provide care free of charge to existing Medi-Cal beneficiaries residing at the facilities as well as all residents eligible for the Medi-

Cal program once they formally enrolled in the program.

5. In March 2002, El Monte and CherryLee received demands from the DHS that they would be required to certify in writing that they will comply with the provisions of AB 1889, a law requiring that no state funds be spent on activities which are deemed to "assist, promote and deter union organizing activity." I returned the form with the certification required under protest. (True and correct copies of the forms submitted are attached as Exhibits I and 2.)

6. Based upon my facilities' dependence on their continued participation in the Medi-Cal program to survive, we had no option but to return the certification form under protest. In deciding whether to return the form, we had to weigh the financial survival of the facilities and well-being of our residents against being deprived of our protections under the United States Constitution and federal labor laws to engage in non-threatening and non-coercive speech and activities in response to union organizing activities. We chose financial survival.

7. Both El Monte and CherryLee have had extensive union organizing and related activity since January 2000. In October 2000, SEIU Local 399 became the recognized bargaining agent for certain employees at El Monte and CherryLee. However, to date, neither facility has reached agreement with Local 399 on the terms of a collective bargaining agreement. Based upon past activities and anticipated future activities in light of the on-going negotiations, we expect that there will be activity

undertaken by such employees in the very near future which will implicate AB 1889.

8. Based upon the substantial percentage of revenue received by the facilities from the Medi-Cal program, we are unable to afford to pay for any of the activities deemed to be prohibited by AB 1889 from non-state funds. As a result, we are effectively prohibited from exercising our rights to speak and act freely under the United States Constitution and federal labor law.

9. If we were going to spend any resources on these "prohibited activities," we determined that in order to attempt to comply with the accounting and record-keeping requirements of AB 1889, we would have to fundamentally and substantially alter our financial accounting and record-keeping. Once again, the burden and cost associated with such a change was so extreme that we decided that we could not afford it. However, we are still fearful that it may not even be possible for us to comply with AB 1889, particularly with respect to the payment of employee salaries and benefits, when we cannot tell - or ultimately control - if or when any employee may decide to engage in "prohibited activities" of which we are unaware.

10. The funds that El Monte and CherryLee receive from the Medi-Cal program provide reimbursement for services already provided to our frail and dependent residents. It is not fair for the state to prohibit us from spending monies received for services provided for any lawful purpose. It is particularly unfair for such prohibitions to cause us to be unable to speak or act freely as guaranteed by the United States Constitution and federal labor laws.

it is also particularly unfair to restrict our speech when unions are not restricted in that regard as well.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

By: /s

Daniel Zilafro

March 22, 2001

Hon. William Lockyer, Esq.
Attorney General
State of California
California Department of Justice
1300 I Street, 11th Floor
Sacramento, CA 95814

Re: AB Crispino and Company, Inc. d/b/a Santa Monica Convalescent Centers
Government Code Section 16645.8(b)
Sixty Day Notice

Dear Attorney General Lockyer:

I am writing on behalf of SEIU Local 399 to provide you with a 60-day notice pursuant to Government Code Section 16645.8(b). SEIU Local 399 believes that AB Crispino and Company, Inc. d/b/a Santa Monica Convalescent Centers (hereinafter "Santa Monica I and II") has impermissibly used state funds to "assist, promote or deter union organizing" in violation of Government Code Section 16645.7.

We request that you exercise your authority under Section 16645.7(c) to demand the production of records by Santa Monica I and 11 "sufficient to show that no state funds were used" to assist, promote or deter union organizing. If such records cannot be produced, or if the records shown that State funds were used for impermissible expenditure, we request that you commence a civil action against Santa Monica 1 and II under Section 16645.g for injunctive relief, damages, civil penalties, and other appropriate

equitable relief. In support this request SEIU Local 399 respectfully submits as follows:

AB Crispino and Company, Inc. owns two jointly managed nursing homes called the Santa Monica Convalescent Centers located at 2828 West Pico Boulevard, and 2250 29th Street, both in Santa Monica, California 90405. Santa Monica I and II are participants in the State Medi-Cal program and receive a majority of their total annual income from that program. We believe that Santa Monica I and II have already received more than $10,000 in Medi-Cal program funds this calendar year.

Starting in February, 2001, Santa Monica I and 11 began to make expenditures to assist, promote or deter union organizing. (Section 16645.7(a)) Specifically, Santa Monica I and II made expenditures to deter the organizing of its employees by SEIU Local 399. These expenditures included the fees and expenses of consultants retained to "research", "prepare", "plan", "coordinate" and "carry out" its campaign to "influence the decision of [their] employees" on whether to support SEIU) Local 399. (Sections 16645(a), 16646(a)). Santa Monica I and 11 also made expenditures for the compensated work lime of their supervisors and employees while participating in the various components of the anti-union campaign. Supervisors participated in anti-union orientation and training sessions on work time with the consultants. In addition, supervisors and employees participated in group meetings on work time for the propose of influencing the decision of workers on whether to join and support the union.

Based on information available to us, we believe that the expenses associated with these

activities were paid from accounts where California Medi-Cal funds were commingled with other funds. (Section 16646(b)). We further believe that Santa Monica I and II have failed to maintain records sufficient to show that no state funds were used for its anti-union campaign as required by Section 16645.7(c).

In demanding records from Santa Monica I and II, you should be sure to include a demand for records showing that supervisors and employees were not paid with State program funds to take part in Santa Monica I and II's anti-union campaign and that they did not participate in those activities on time paid for by the State for the care of Medi-Cal recipients.

Please feel free to contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

/s

John J. Sullivan
Associate General Counsel,
SEIU

March 22, 2001

Hon. William Lockyer, Esq.
Attorney General
State of California
California Department of Justice
1300 I Street, 11th Floor
Sacramento, CA 95814

Re: Fountain View Inc. d/b/a Baycrest Care Center Government Code Section 16645.8(b) Sixty Day Notice

Dear Attorney General Lockyer:

I am writing on behalf of SEIU Local 399 to provide you with a 60-day notice pursuant to Government Code Section 16645.8(b). SEIU Local 399 believes that Fountain View Inc. d/b/a Baycrest Care Center (hereinafter "Baycrest") has impermissibly used state funds to "assist, promote or deter union organizing" in violation of Government Code Section 16645.7.

We request that you exercise your authority under Section 1664 5.7(c) to demand the production of records by Baycrest "sufficient to show that no state funds were used" to assist, promote or deter union organizing. If such records cannot be produced, or if the records shown that State funds were used for impermissible expenditures, we request that you commence a civil action against Baycrest under Section 16645.8 for injunctive relief, damages, civil penalties, and other appropriate equitable relief. In support this request SEW Local 393 respectfully submits as follows:

Fountain View Inc. owns a nursing home called the Baycrest Care Center at 3750 Garnet Street in Torrance, California. Baycrest is a participant in the State Medi-Cal program and receives a majority of its total annual income from that program. We believe that Baycrest has already received more than $10,000 in Medi-Cal program funds this calendar year.

Starting in February, 2001, Baycrest began to make expenditures to assist, promote or deter union organizing. (Section 16645.7(a)) Specifically, Baycrest made expenditures to deter the organizing of its employees by SEIU Local 399. These expenditures included the fees and expenses of consultants hired by Baycrest to "research", "prepare", "plan", "coordinate" and "carry out" its campaign to "influence the decision of its employees" on whether to support SEIU Local 399. (Sections 16645(a), 16646(a)). Baycrest also made expenditures for the compensated work time of its supervisors and employees while participating in the various components of its anti-union campaign. Supervisors participated in anti-union orientation and training sessions on work time with the consultants. In addition, supervisors and employees participated in group meetings on work time for the propose of influencing the decision of workers on whether to join and support the union.

Based on information available to us, we believe that the expenses associated with these activities were paid from accounts where California Medi-Cal funds were commingled with other funds. (Section 16646(b)). We further believe that Baycrest has failed to maintain records sufficient to show that

no state funds were used for its anti-union campaign as required by Section 16645.7(c).

In demanding records from Baycrest, you should be sure to include a demand for records showing that supervisors and employees were not paid with State program funds to take part in Baycrest's anti-union campaign and that they did not participate in those activities on time paid for by the State for the care of Medi-Cal recipients.

Please feel free to contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

/s

John J. Sullivan
Associate General Counsel,
SEIU

March 22, 2001

Hon. William Lockyer, Esq.
Attorney General
State of California
California Department of Justice
1300 I Street, 11th Floor
Sacramento, CA 95814

Re: Summit Care California d/b/a Royalwood Care Center Government Code Section 16645.8(b) Sixty Day Notice

Dear Attorney General Lockyer:

I am writing on behalf of SEIU Local 399 to provide you with a 60-day notice pursuant to Government Code Section 16645.8(b). SEIU Local 399 believes that Summit Care California d/b/a Royalwood Care Center (hereinafter "Royalwood") has impermissibly used state funds to "assist, promote or deter union organizing" in violation of Government Code Section 16645.7.

We request that you exercise your authority under Section 16645.7(c) to demand the production of records by Royalwood "sufficient to show that no state funds were used" to assist, promote or deter union organizing. If such records cannot be produced, or if the records shown that State funds were used for impermissible expenditures, we request that you commence a civil action against Royalwood under Section 16645.8 for injunctive relief, damages, civil penalties, and other appropriate equitable relief. In

support this request SEIU Local 399 respectfully submits as follows:

Fountain View Inc. owns a nursing home called the Royalwood Care Center at 22520 Maple Avenue in Torrance, California. Royalwood is a participant in the State Medi-Cal program and receives a majority of its total annual income from that program. We believe that Royalwood has already received more than $10,000 in Medi-Cal program funds this calendar year.

Starting in February, 2001, Royalwood began to make expenditures to assist, promote or deter union organizing. (Section 16645.7(a)) Specifically, Royalwood made expenditures to deter the organizing of its employees by SEIU.) Local 399. These expenditures included the fees and expenses of consultants hired by Royalwood to "research", "prepare", "plan", "coordinate" and "carry out" its campaign to "influence the decision of its employees" on whether to support SEIU Local 399. (Sections 1664 5(a), 16646(a)). Royalwood also made expenditures for the compensated work time of its supervisors and employees while participating in the various components of its anti-union campaign. Supervisors participated in anti-union orientation and training sessions on work time with the consultants. In addition, supervisors and employees participated in group meetings on work time for the propose of influencing the decision of workers on whether to join and support the union.

Based on information available to us, we believe that the expenses associated with these activities were paid from accounts where California Medi-Cal funds were commingled with other funds.

(Section 1664 6(b)). We further believe that Royalwood has failed to maintain records sufficient to show that no state funds were used for its anti-union campaign as required by Section 16645.7(c).

In demanding records from Royalwood, you should be sure to include a demand for records showing that supervisors and employees were not paid with State program funds to take part in Royalwood's anti-union campaign and that they did not participate in those activities on time paid for by the State for the care of Medi-Cal recipients.

Please feel free to contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

/s

John J. Sullivan
Associate General Counsel,
SEIU

June 8, 2001

Hon. William Lockyer, Esq.
Attorney General
State of California
California Department of Justice
1300 I Street, 11th Floor
Sacramento, CA 95814

Re: MEK Long Beach LLC d/b/a Regency Oaks Care Center Government Code Section 16645.8(b) Sixty Day Notice

Dear Attorney General Lockyer:

I am the Associate General Counsel of the Service Employees International Union, AFL-CIO ("SEIU"), a California tax payer. I am writing on behalf of the SEIU and its members in the State of California, to provide you with a 60 day notice pursuant to Government Code Section 16645.8(b). We believe that MEK Long Beach LLC, d/b/a Regency Oaks Care Center ("Regency Oak") has impermissibly used state funds to "assist, promote or deter union organizing" in violation of Government Code Section 16645.7.

We request that you exercise your authority under Section 16645.1(c) to demand the production of records by Regency Oaks "sufficient to show that no stale funds were used" to assist, promote or deter union organizing. If such records cannot be produced, or if the records shown that State funds were used for impermissible expenditures, we request that you commence a civil action against Regency Oaks under Section 16645.8 for injunctive relief, damages, civil penalties, and other appropriate equitable relief. In

support this request SEIU and its members respectfully submit as follows:

MEK Long Beach owns and operates a nursing borne located at 3850 East Ester Street, Long Beach, California, called the Regency Oaks Care Center. Regency Oaks is a participant in the State Medi-Cal program and receives a significant portion of its total annual income from that program. We believe that Regency Oaks has already received more than $10,000 in Medi-Cal program funds this calendar year.

Starting in late February, 2001, Regency Oaks began to make expenditures to assist, promote or deter union organizing. (Section 16645.7(a)) Specifically, Regency Oaks made expenditures to deter the organizing of its employees by SEIU Local 399. These expenditures included the fees and expenses of consultants retained to "research", "prepare", "plan", "coordinate" and "carry out" its campaign to "influence the decision of [their] employees" on whether to support SEIU Local 399. (Sections 16645(a), 16646(a)). Regency Oaks retained the services of Cruz and Associates, Inc to "persuade" its employees not to support the Union.[1] Regency Oaks also made expenditures for the compensated work time of its supervisors and employees while participating in the various components of the anti-union campaign. Supervisors participated in anti-union orientation and training sessions on work time with the consultants. In addition, supervisors and

---

[1] A copy of Cruz and Associates, Inc., Receipts and Disbursements Report for its anti-union persuader activities, filed with the United States Department of Labor, for calendar year 2000 is attached.

employees participated in group meetings on work time for the propose of influencing the decision of workers on whether to join and support the union.

In demanding records from Regency Oaks, you should be sure to include a demand for records showing that supervisors and employees were not paid with State program funds to take part in Regency Oak's anti-union campaign and that they did not participate in those activities on time paid for by the State for the care of Medi-Cal recipients.

Please feel free to contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

/s

John J. Sullivan
Associate General Counsel,
SEIU

California Department of Justice
Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-25 50

Re: M.V. Transportation, Inc.. and Teamsters Local 85 (Govt. Code §16645)

Dear Madam or Sir:

This office represents Teamsters Local 85 which recently embarked upon an organizing campaign among MV Transportation, Inc.'s San Francisco-based employees. I am contacting your office to report MV Transportation's violations of California Government Code §16645, to request that the Attorney General's office bring suit against MV Transportation pursuant to Government Code § 16645.8(a), and to give notice, pursuant to Government Code §16645.8(b), that should the Attorney General fail to initiate such action Local 85 will itself initiate civil action against MV Transportation to enforce the applicable statute.

MV Transportation, from its San Francisco facility, provides paratransit services to MediCal beneficiaries pursuant to a contract with the California Department of Health Services. As such, MV is a "state contractor" within the meaning of Govt. Code §16645(c).

Govt. Code § 16645.3 prohibits state contractors from taking any action to "deter union organizing" by its employees. Nonetheless, MV in the past few weeks has embarked upon an aggressive anti-union campaign to discourage its employees from supporting Local 85. This campaign so far has

included engaging in surveillance of employee union activity, interrogating employees about their union sentiments, and, by memo dated November 28,2001, directing employees not sign union authorization cards (a copy of the November 28 memo is enclosed).

On November 27, one manager even followed an employee to his bus and directed him not to sign an authorization card just as he had the pen in his hand. According to its November 28 memo, MV also plans to conduct several mandatory employee meetings on December 5, presumably to further the Company's efforts to "deter union organizing." Local 85 is documenting these and other violations and intends to seek full enforcement of the laws protecting the MV employees' right to organize.

Very truly yours,

/s/

Andrew H. Baker

Memo

To: San Francisco Division

From: ____

Date: 11/28/2001

Re: Unions and Labor Issues

SF Team

It has been brought to my attention that there are concerns and communication issues among drivers and staff. Some of these concerns may revolve around the condition of equipment, salary, benefits, schedules and etc. To complicate our communication process in the last few days we have had Teamster persons outside the gate. What they want is your money in the form of dues. They will say almost anything in that regard. Ask the senior drivers, their promises are hollow and in the last election the SF employees voted 74 to 10, a resounding No!

The owners of MV Transportation, _____ have been informed of the situation and will be here to address your concerns and answer your questions. This will happen at our next Safety Meeting. I ASK YOU UNTIL THEN, NOT TO SIGN TEAMSTER CARDS.

Meeting: Wednesday, December 5th, 2001

Times: 11:00 am

1:00 pm

6:00pm

Please remember, this meeting is mandatory and you must attend during one of these time periods.

My door is always open and I welcome the opportunity to speak with all of you and constructively address suggestions, ideas and concerns.

Best Regards.

March 28, 2002

Hon. William Lockyer
Attorney General
State of California
California Department of Justice
1300 I Street, 11th Floor
Sacramento, CA 95814

Re: Palomar Pomerado Health System
Misappropriation of Public Assets & Breach of Charitable Trust

Dear Attorney General Lockyer:

On behalf of the California Nurses Association (CNA), I am writing to advise you of serious and substantial misappropriations of state funds, received by Palomar Pomerado Health System ("PPHS") for public health purposes, but apparently expended for purposes expressly prohibited by Sections 16645.1, 16645.2 and/or 16645.6 of the California Government Code. CNA requests that you exercise your authority under Section 16645.7(c) to determine the production of records by PPHS "sufficient to show that no state funds were used" to assist, promote or deter union organizing. If such records cannot be produced, or if the records show that State funds were used for impermissible expenditures, we request that you commence a civil action against PPHS under Section 16645.8 for injunctive relief, damages, civil penalties, and other appropriate equitable relief. In support of this request. CNA respectfully submits the following information.

Palomar Pomerado Health System

Palomar Pomerado Health System is an integrated health care system consisting of non-profit and for-profit entities, including Palomar Medical Center, Pomerado Hospital, Villa Pomerado, Palomar Continuing Care Center, and Escondido Surgery Center. PPHS operates as a public Hospital District and as a "public agency" within the meaning of the Meyer-Milias-Brown Act ("MMBA"), Calif. Govt Code § 3501(c). PPHS facilities include Palomar Medical Center, Pomerado Hospital, skilled nursing facilities and a surgery center.

State Funding of PPHS Operations (Medi-Cal)

PHHS receives substantial and ongoing funding from the State of California, including Medi-Cal funds. The following summary reflects the significant amounts of Medi-Cal funding received by the two PPHS acute care facilities over the past few years, Palomar Medical Center and Pomerado Hospital:

Hospital Facility	Funding years	Gross Outpatient Medi-Cal Revenue	Gross Inpatient Med-Cal Revenue
Palomar Medical Center	1995-1999	$32,427,216	$179,490,914
Pomerado Hospital	1995-1999	$ 9,121,745	$ 48,081,538
TOTAL	1995-1999	$41,548,962	$227,572,442

Registered Nurses' Organization Campaign – PPHS Funding of an Anti-Union Campaign with Misappropriated Assets and Public Funds

The Registered Nurses employed by PPHS are actively engaged in an organizing campaign to win exclusive representation by the California Nurses Association, exercising rights of self. determination guaranteed by the MMBA, Govt. Code § 3502. The PPH Board and management are hostile to CNA and oppose collective action and exclusive representation by Registered Nurses. PPHS has and continues to actively interfere with nurses' exercise of statutory rights to "join and participate in an employee organization of their own choosing for the purpose of representation on all matters of employer-employee relations," protected, *inter alia*, by Govt. Code § 3502.

PPHS management is engaged in an aggressive, heavily financed campaign to defeat collective organization of PPHS Registered Nurses and their representation by the California Nurses Association. PPHS has and continues to actively interfere with nurses' exercise of statutory rights to "join and participate in an employee organization of their own choosing for the purpose of representation on all matters of employer-employee relations," protected, *inter alia*, by Gov. Code § 3502.

Because of the extent of "persuader" activity and the substantial costs of the employer campaign, it is likely that PPHS has commingled public fund received from the State of California, including Medi-Cal reimbursements, with other funds that have been expended for legal and consulting fees and salaries of PPH supervisors and employees, and on research,

preparation, planning, coordination, and carrying on activities to interfere with and deter the PPH nurses' organizing for representation by CNA. Such expenditures are expressly prohibited by state law. (Govt. Code §§ 16645.6, 16646).

The misappropriation of funds includes significant expenditures on a highly visible campaign to justify PPHS violations of recent amendments to the Meyers-Milias-Brown Act requiring MMBA employers to participate in "card check" procedures for union recognition. (See enclosed "talking points" and exemplars of an expensive PPHS anti-union web page.)

Note that a month ago, we wrote to the PPHS Board of Directors to give them an opportunity to remedy violations of law and misappropriations of assets before taking further action. We also asked for certain information necessary for determining whether the substantial PHHS assets currently being used for the anti-union campaign against CNA have been drawn from property segregated accounts, or from co-mingled accounts. (See enclosed February 11 letter from Ted Cahill to Norman Gruber.) Our request was simple and straightforward:

1 Publicly disclose all funds received by PPHS from the State of California;

2 Identify the specific disbursements of those funds, including whether any such funds are received and commingled with other funds of PPHS;

3. Report the total amount and itemization of all expenditures made to deter or influence the decisions of PPHS Registered Nurses regarding the

selection of the California Nurses Association as their exclusive collective bargaining representative; and

4. In the event state funds or commingled state and other PPHS funds have been expended for the unlawful purposes of interfering with or deterring RN organizing, immediately reimburse all such misappropriated assets.

In response, PPHS denied any improper use of state funds and then claimed our requests did not "reasonably identify" PPHS records subject to disclosure. (See enclosed February 18, 2002 letter to Ted Cahill from Norman Gruber.) Under the circumstances, we view this response as an admission that funds have been commingled and substantial sums spent unlawfully on the anti-union campaign.

Accordingly, we ask that you invoke the procedures of Govt. Code § 16645.7(c) in order to obtain records sufficient to show that PPHS has not used state funds unlawfully to support its heavily financed campaign against the nurses organizing for union representation. In the event PPHS refuses production of these records or the records do not reflect properly segregated accounts as required by law, we ask that you institute proceedings seeking appropriate equitable relief.

Thank you for your immediate attention to this flagrant abuse of workers' rights. Please call me if you have any questions.

Respectfully submitted,

/s

David M. Johnson
Southern California Director

Stationary Engineers, Local 39
INTERNATIONAL UNION OF OPERATING
ENGINEERS AFL-CIO

April 12, 2002

Mr. Bill Lockyer
Attorney General
Attn: Ralph Lightstone
Department of Justice
1300 I Street, Suite 1740
Sacramento, CA 95814

Re: Golden Sierra Job Training Agency

Dear Mr. Lightstone:

I am a Business Representative for Local Union No. 39. Among my duties are to organize Public Employee Bargaining Units. I am writing to request your office's assistance enforcing the Cedillo Neutrality In Government law.

The Union recently organized a small bargaining unit in Golden Sierra Job Training Agency. Taking advantage of newly amended Meyers-Milias-Brown Act, the Union demanded recognition on the basis of a majority of cards in appropriate units. The employer has refused to recognize the Union for approximately three months. The employer has hired an attorney to resist the Union organizing drive. The employer, Golden Sierra Job Training Agency, is a grant recipient under Gov. Code 166452 and has not complied with the record keeping requirement of 166452(c), segregating State money from general revenues. Therefore, the Golden

Sierra has violated Gov. Code § 16645.1, prohibiting use of State funds to assist, promote or deter Union organizing.

Please contact me and I will provide any additional documents or other information you request. Thank you in advance for your assistance in this matter.

Sincerely,

/s

Chuck Thiel

Business Representative

April 22, 2002

Hon. William Lockyer
Attorney General
State of California
California Department of Justice
1300 I Street, 11th Floor
Sacramento, California 95814

Re: JPH Management, Inc. d/b/a Mid-Wilshire Health Care Center Government Code Section 16645.8(b) 60-Day Notice

Dear Attorney General Lockyer:

The undersigned represents Service Employees International Union, Locals 399 and 434B, AFL-CIO (collectively, "SEIU") regarding JPH Management, Inc. d/b/a Mid-Wilshire Health Care Center ("Mid-Wilshire"). SEIU are California taxpayers.

By this letter, SEIU and their members are providing the State of California with a 60-day notice pursuant to Government Code Section 16645.8(b). We believe that Mid-Wilshire has impermissibly used state funds to "assist, promote or deter union organizing" in violation of Government Code Section 16645.7.

We request that you exercise your authority under Section 16645.7(c) to demand the production of records from Mid-Wilshire "sufficient to show that no state funds were used" to assist, promote or deter union organizing. If such records cannot be produced, or if the records show that State funds were used for

impermissible expenditures, we request that you commence a civil action against Mid-Wilshire under Section 16645.8 for injunctive relief, damages, civil penalties, and other appropriate equitable relief.

JPH Management, Inc. owns and operates a nursing home located at 676 S. Bonnie Brae Street, Los Angeles, California, called the Mid-Wilshire Health Care Center. Mid-Wilshire is a participant in the state Medi-Cal program and receives a significant portion of its total annual income from that program. We believe that Mid-Wilshire has already received more than $10,000 in MediCal programs funds this calendar year.

Starting in August, 2001, Mid-Wilshire began to make expenditures to assist, promote or deter union organizing. [Section 16645.7(a).] Specifically Mid-Wilshire made expenditures to deter support for SEIU. We believe that these expenditures included legal fees, consulting fees and salaries of supervisors and employees "incurred for research for, or preparation, planning or coordination of, or carrying out" its campaign to "influence the decision of [their] employees" on whether to support SEIU. [Sections 16645(a) & 16646(a).]

In response to Mid-Wilshire's anti-union campaign, SEIU filed an unfair labor practice charge with the National Labor Relations Board ("the Board"). Having found merit to SEIU's charge, the General Counsel of the Board recently issued a complaint against Mid-Wilshire alleging the following violations of the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*:

> First, interrogating employees about their support for the Union.

Second, refusing to give the wage increase to Union activists that had been given to other employees and informing the Union activists that they were not~ being given the wage increase because of their support for the Union.

Third, discharging two Union activists and disciplining other Union activists because of their support for the Union.

Fourth, threatening an employee with termination because of the employee's undocumented immigration status.

Fifth, soliciting employees to sign a decertification petition to get rid of the Union.

Sixth, granting a wage increase to an employee because she signed the decertification petition to get rid of the Union-.

Seventh, failing and refusing to bargain with the Union over mandatory subjects of bargaining, such as changes to the sick leave policy and the no-loitering policy.

A copy of the complaint is enclosed. The trial is currently scheduled to begin on May 13, 2002.

Additionally, Mid-Wilshire made further expenditures to assist, promote or deter union organizing in connection with a recent campaign to convince the employees to become non-represented. [Section 16645.7(a).] Local 399 had agreed to transfer representation to Local 434B, but Mid-Wilshire refused to recognize Local 434B, instead requiring an election by the Board. Mid Wilshire's motivation was clear. As part of the election, the employees had the option of becoming non-represented. Mid-Wilshire campaigned to attempt to convince the employees to

vote for non-representation. Despite Mid-Wilshire's campaign, an overwhelming number of employees voted in the election that was held on April 19 to remain unionized and to transfer representation to Local 4 34B. We believe that Mid-Wilshire's expenditures for the campaign included legal fees, consulting fees and salaries of supervisors and employees "incurred for research for, or preparation, planning or coordination of, or carrying out" its campaign to "influence the decision of [their] employees" on whether to remain represented. [Sections 16645(a) & 16646(a).]

Based on information available to us, we believe that the expenses associated with these activities were paid from accounts where California Medi-Cal funds were commingled with other funds. [Section 16646(b).] We further believe that Mid-Wilshire has failed to maintain records sufficient to show that no state funds were used for its anti-union campaign as required by Section 16645.7(c).

In demanding records from Mid-Wilshire, please be should be sure to include a demand for records showing that supervisors and employees were not paid with state program funds to take part in Mid-Wilshire's anti-union campaigns and that (hey did not participate in those activities on time paid for by the State for the care of Medi-Cal recipients.

It is rare that an employer so blatantly and aggressively attempt to undermine its employees' right to choose whether to remain unionized. Mid-Wilshire's actions are a clear breach of the public trust and epitomize the type of conduct that AB 1889 was intended to prevent.

Please feel free to contact us if you have any

questions regarding this matter.

Yours very truly,

HOLGUIN & GARFIELD, APLC

By: /s/
Elizabeth Garfield

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 31

Case 31—CA-25336

JPH MANAGEMENT, INC., D/B/A
MID—WILSHIRE HEALTH CARE CENTER
and
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 399, AFL-CIO

COMPLAINT
AND
NOTICE OF HEARING

Service Employees International Union, Local 399, AFL-CIO, herein called the Union, has charged that JPH Management, Inc., d/b/a Mid-Wilshire Health Care Center, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The original charge was filed by

the Union on October 30, 2001, and a copy thereof was served on Respondent by certified mail on or about October 31, 2001.

(b) The first amended charge was filed by the Union on November 5, 2001, and a copy thereof was served on Respondent by certified mail on or about November 5, 2001.

(c) The second amended charge was filed by the Union on December 21, 2001, and a copy thereof was served on Respondent by certified mail on or about December 26, 2001.

(d) The third amended charge was filed by the Union on January 29, 2002, and a copy thereof was served on Respondent by certified mail on or about January 30, 2002.

2. (a) At all material times, Respondent, a corporation with an office and place of business in Los Angeles, California, herein called the facility, has owned and operated a nursing home for the elderly.

(b) During the calendar year ending December 31, 2002 Respondent, in conducting its business operations described above in paragraph 2(a), derives gross revenues in excess of $100, 000.00.

(c) During the calendar year ending December 31, 2001, Respondents in conducting its business operations described above in paragraph 2(a), purchased and received goods valued in excess of $40,000.00 directly from other enterprises located in California, each of which other enterprises received such goods in substantially the same form directly from points located outside of the State of California.

3. At all material times, Respondent has

been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Samuel Park — Administrator

Firs. Chin — Director of Nursing

Lilia Pampolino — Director of Staff Development

6. The following employees of Respondents herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full—time and regular part-time dietary employees, housekeeping employees, nursing employees, clerical employees, laundry employees, maintenance employees, and activity assistants employed by the Employer at its facility located at 676 South Bonnie Brae Street, Los Angeles, California excluding bookkeeper, professional employees, guards and supervisors (including supervisory LVNs) as defined in the Act.

7. (a) Since at least 1996, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit, and since at least 1996 the Union has been

recognized as the representative by the Respondent. This recognition was embodied in a collective bargaining agreement which was effective by its terms from July 1, 1996, through June 20, 1999. Said agreement covered rates of pay, wages, hours of employment, and other terms and conditions of employment of the Respondent's employees employed in the Unit.

(b) From in or around May 1999 through June 1999, the Union and Respondent engaged in bargaining for a successor collective bargaining agreement.

(c) Whether or not the parties had reached agreement on a new collective bargaining agreement was the subject of Board proceedings which resulted in a Board Decision and Order in JPH Management, Inc., d/b/a Mid-Wilshire Health Care Center, 337 NLRB No. 7, which issued on December 21, 2001.

(d) While the Board in JPH Management, Inc., d/b/a Mid-Wilshire Health Care Center, 337 NLRB No. 7 (December 21, 2001), concluded that the parties had not reached agreement on a new collective bargaining agreement, it also found that Respondent violated Section 8(a) (1) and (5) of the Act by unilaterally rescinding wage increases given to employees. The Board ordered Respondent to cease and desist from engaging in such conduct in the future.

(e) In or around March 2001, the Union requested Respondent to commence bargaining for a successor collective bargaining agreement.

8. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

9. (a) Since the summer of 2001, and continuing to date, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit in that:

(b) in or about the summer of 2001, Respondent changed the sick leave policy contained in Article VI of the 1996-1999 collective bargaining agreement.

(c) On or about August 9, 2001, Respondent changed the no-loitering policy.

(d) The subjects set forth above in subparagraphs and 9(c) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(e) Respondent engaged in the conduct described above in paragraphs 9(b) through 9(c) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

10. Respondent by Lilia Pampolino:

(a) In or around August 2001, at the facility, told an employee that the Employer was not giving wages to that employee or to two other employees because of their Union activity.

(b) On or about August 14, 2001, at the facility, threatened an employee concerning the employee's undocumented immigration status unless

that employee signed a petition to decertify the Union.

(c) In or around September 2001, at the facility, solicited an employee to sign a petition to decertify the Union.

(d) On or about November 12, 2001, at the facility, interrogated an employee about the employee's Union activity.

11. (a) In or around August 2001, Respondent denied wage increases to its employees Silvia Calderon, Roberto Calderon, Robert Galdamez and Rodolfo Ortiz.

(b) Respondent engaged in the conduct described above in paragraph 11(a) because the named employees of Respondent assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

12. (a) In or around September 2001, Respondent granted a wage increase to its employee Maria Garcia.

(b) Respondent engaged in the conduct described above in paragraph 12(a) because Maria Garcia signed a petition to decertify the Union at Respondent's request, and to encourage other employees to do so.

13. (a) On or about October 24, 2001, Respondent issued three written warnings and a 3-day suspension to its employee Rodolfo Ortiz.

(b) Respondent engaged in the conduct described above in paragraph 13(a) because Rodolfo Ortiz assisted the Union and engaged in protected

concerted activities, and to discourage employees from engaging in these activities.

14. (a) On or about November 2, 2001, Respondent discharged its employee Cristina de los Santos.

(b) Respondent engaged in the conduct described above in paragraph 14(a) because Cristina de los Santos assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

15. (a) On or about November 13, 2001, Respondent issued a warning and 3-day suspension to its employee Sofia Ruiz.

(b) Respondent engaged in the conduct described above in paragraph 15(a) because Sofia Ruiz assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

16. (a) On or about November 14, 2001, Respondent discharged its employee Nellie Castillo.

(b) Respondent engaged in the conduct described above in paragraph 16(a) because Nellie Castillo assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

17. By the conduct described above in paragraph 9, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(a) (5) of the Act.

18. By the conduct described above in paragraphs 11 through 16, Respondent has been

discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) of the Act.

19. By the conduct described above in paragraphs 9 through 18, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a) (1) of the Act.

20. The unfair labor practices of Respondent described .above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Dated at Los Angeles, California, this _____st day of March 2002.

_____

James J. McDermott,
Regional Director

National Labor Relations Board

Region 31

April 24, 2002

Hon. William Lockyer
Attorney General
State of California
California Department of Justice
1300 1 Street, 11th Floor
Sacramento, CA 95814

Re: St. Mary Medical Center (St. Joseph Health System) Misappropriation of Public Assets & Breach of Charitable Trust

Dear Attorney General Lockyer:

On behalf of the California Nurses Association (CNA), I am writing to advise you of serious and substantial misappropriations of state funds, received by St. Mary Medical Center (St. Joseph Health System) for public health purposes, but apparently expended for purposes expressly prohibited by Sections 16645.1, 16645.2 and/or 16645.6 of the California Government Code. CNA requests that you exercise your authority under Section 16645.7(c) to demand the production of records by St. Mary Medical Center "sufficient to show that no state funds were used" to assist, promote or deter union organizing. If such records cannot be produced, or if the records show that State funds were used for impermissible expenditures, we request that you commence a civil action against St. Mary Medical Center under Section 16645.8 for injunctive relief, damages, civil penalties, and other

appropriate equitable relief. In support of this request, CNA respectfully submits the following information.

St. Medical Center

St. Mary Medical Center (St. Joseph Health System) is an integrated health care system consisting of non-profit and for-profit entities

State Funding of St. Mary Medical Center Operations (Medi-Cal)

St. Mary Medical Center receives substantial and ongoing funding from the State of California, including Medi-Cal funds. We estimate that millions of dollars of state funds have been paid to the Medical Center over the past five years.

Registered Nurses' Organizing Campaign —St. Mary Medical Center Funding of an Anti-Union Campaign with Misappropriated Assets and Public Funds

The Registered Nurses employed by St. Mary Medical Center are actively engaged in an organizing campaign to win exclusive representation by the California Nurses Association, exercising rights of organization guaranteed by the NLRA Section 7. The St. Mary Medical Center Board and management are hostile to CNA and oppose collective action and exclusive representation by Registered Nurses. St. Mary Medical Center has and continues to actively interfere with nurses' exercise of statutory rights to "self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining."

St. Mary Medical Center management is engaged in an aggressive, heavily financed campaign to defeat collective organization of St. Mary Medical Center Registered Nurses and their representation by the California Nurses Association. Because of the extent of "persuader" activity and the substantial costs of the employer campaign, it is likely that St. Mary Medical Center has commingled public funds received from the State of California, including Medi-Cal reimbursements, with other funds that have been expended for legal and consulting fees and salaries of St. Mary Medical Center supervisors and employees, and on research, preparation, planning, coordination, and carrying out activities to interfere with and deter the St. Mary Medical Center nurses' organizing for representation by CNA. Such expenditures are expressly prohibited by state law. (Govt. Code § 16645.6, 16646.)

The misappropriation of funds includes significant expenditures on a highly visible public relations campaign and the retention of "persuader labor consultants" to directly address registered nurses in one-to-one as well as mandatory meetings on employee paid tune. (See enclosed full page newspaper ads and declarations of registered nurses.)

Thank you for your immediate attention to this flagrant abuse of Registered Nurses' tights and California taxpayers. Please call me if you have any questions.

Respectfully submitted,

____/s/_____
David Johnson
Southern California Director

April 25, 2002

Bill Lockyer, Attorney General State of California
Department of Justice
1300 I Street
P.O. Box 944288
Sacramento, CA 94244-2550

Re: Enforcement of AB 1889 Against Laidlaw Transit Services, Inc. in Irvine, California

Dear Attorney General Lockyer:

This office is legal counsel to Teamsters Local 952 ("Union") in the above referenced matter. This letter is to provide 60 days notice under Government Code §16645.8 of violations of AB 1889 by Laidlaw Transit Services, Inc. ("Employer").

The Union has been involved in an organizing campaign of the Employer at its facility located at 16281 Construction Circle, West, Irvine, CA 92806. The Employer is a contractor for the Orange County Transportation Authority ("OCTA"). The Employer receives state funds for supplying transportation services for OCTA. OCTA is a transit authority authorized pursuant to the Public Utility Code.

The Union filed a petition for representation of the employees of the Employer with the -National Labor Relations Board ("NLRB") on January 28 2002. This election in the case has been blocked by the union's filing of unfair labor practice charges against the Employer.

On March 21, 2002 the union notified Jim Byrne, the general manager for the Employer, of the

application of AB 1889. The Union has knowledge of the Employer was and is holding captive audience meetings with employees on the Employer's premises and has paid employees for attendance at these meetings. The sole purpose of these meetings is to dissuade employees from seeking union representation from the Union. A copy of the Union's letter to Tim Byrne is submitted herewith.

On March 25, 2002 I was informed by legal counsel for the Employer that it would not be complying with AB 1889 because of its opinion that the law was unconstitutional and unenforceable under both the California Constitution and the United States Constitution. A copy of Theodore Scott's letter to me dated March 25, 2002 is submitted herewith.

Based on the foregoing, the Union requests that your office seek enforcement of AB 1889 against Laidlaw Transit Services, Inc. In the alternative, the Union is providing you with 60 days notice as required by the law. Please do not hesitate to contact me for additional information including evidence in support of this complaint.

Very truly yours,

Florice Hoffman

March 25, 2002

Florice Hoffman, Esq.
Attorney at Law
Law Offices of Florice Hoffman
8502 East Chapman Avenue, Suite 353
Orange, California 92869

Re: Laidlaw Transit Services, Inc. and Teamsters Local Union 952

Dear Ms. Hoffman:

As you know, I represent Laidlaw Transit Services, Inc. with respect to labor relations matters, including Teamsters Local 952's organizing activity at Laidlaw's Irvine, California facility. Laidlaw has asked me to respond to your client's March 21, 2002 letter to Mr. Byrne. A copy of Local 952's March 21 letter is attached hereto for your reference.

Laidlaw's efforts in providing information to its employees relating to Teamsters Local 952's organizing efforts are in accordance with federal and state law. While I am sure Teamsters Local 952 would like to prevent employees from learning the true facts about union representation generally, and Teamsters Local 952 specifically, Laidlaw believes that such information should be made available so that employees may make a free and informed decision when deciding whether they wish to be represented by your client. Laidlaw will continue its efforts towards providing such information, and will not be cowed by your client's baseless accusations.

I would also note that the legislation referred to in your client's March 21 letter is unconstitutional and therefore unenforceable for many different reasons. The intent of the legislations is to prevent speech which is protected by both the United States Constitution and the California Constitution. The legislation also violates an employer's right under the National Labor Relations Act to communicate its opinions regarding union representation to its employees. For these and other reasons, the legislation cannot withstand judicial scrutiny.

Please do not hesitate to contact me if you would like to discuss this matter further.

/s/
Theodore R. Scott
of
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

LOCAL UNION NO. 952
GENERAL TRUCK DRIVERS, OFFICE, FOOD AND WAREHOUSE UNION

March 21, 2002

Jim Byrne
General manager
Laidlaw Transit Service
16281 Construction Circle, West
Irvine, CA 92806

Re: Assembly AB 1889; The Right to Organize

Dear Mr. Byrne:

This letter is to inform you that is the position of Teamsters Local 952, hereinafter referred to as the Union, that the above referenced California state law applies to Laidlaw Transit Services, Inc. hereinafter referred to as Laidlaw. In addition, Laidlaw may have already taken actions in conflict with this recent law.

AB 1889, applies to an Employer that receives state funds for supplying services pursuant to a written contract with the state or any of its agencies. This law forbids the use of state funds to influence the decisions of its employees to support or oppose a labor organization that seeks to represent its employees. AB 1889 also applies to Employers that receive monies from special districts such as the Orange County Transportation Authority (OCTA"). It is the union's understanding that Laidlaw receives monies from the State and OCTA for its operations.

Moreover, Laidlaw may have already violated this law by holding persuader meetings with employees and applicants for employment. The Union is willing to settle these potential violations, amicably without resort to litigation, if a neutrality agreement can be worked out for the upcoming NLRB election.

AB 1889 does not prohibit providing this Union with access to Laidlaw Transit's property or facility under such a neutrality agreement. The Union looks forward to meeting with you to discuss this matter further. Please contact me upon your receipt of this letter for the purpose of scheduling a mutually convenient time to meet. I can be reached at (714) 740-6242 and await your timely reply.

Respectfully,

Patrick D. Kelly
Secretary Treasurer

SERVICE EMPLOYEES
INTERNATIONAL UNION AFL-CIO CLC
1538 Market Street, Suite 4
Redding, CA 96001
530.244.7811

May 1, 2002

Mr. Bill Lockyer
Attorney General
Attn: Mr. Ralph Lightstone
Department of Justice
1300 I Street, Suite 1740
Sacramento, CA 95814

Subject: Siskiyou Training & Employment Program, Inc. (STEP)

Dear Mr. Lightstone:

I am a Field Representative and Organizer for Service Employees International Union, Local 1292. Among my duties are organizing new bargaining units. I am writing to request your office's assistance in enforcing the Cedillo Neutrality in Government law.

This Union recently organized a small bargaining unit at the above-named employer. STEP is a Workforce Investment Act contractor, organized along the lines of the various Private Industry Councils around the state, and, I believe, receives State funds to administer its various programs. The employer has hired an attorney to resist the Union organizing drive. The employer has also engaged in

conduct subsequent to the filing of our recognition petition which led to the filing of two Unfair Practice charges with the National Labor Relations Board. I believe the employer to be a grant recipient as defined in Gov. Code § 16645.2 who has not complied with the record-keeping requirement of Gov. Code § 16645.2(c), segregating State funds from general revenues. Therefore, STEP has violated Gov. Code § 16645.1, which prohibits use of State funds to assist, promote, or deter Union organizing.

Please contact me and I will provide any additional document or other information you request. Thank you in advance for your assistance in this matter.

Robert Bolger, Field Representative/Organizer

Altshuler, Berzon, Nussbaum, Rubin & Demain
Attorneys At Law
177 Post Street, Suite 300
San Francisco, CA 94106

May 16, 2002

The Honorable Bill Lockyer
Attorney General
State of California
California Department of Justice
1300 I Street, 11th Floor
Sacramento, CA 95814

Re: Ensign Group, Inc. d.b.a. Sonoma Health Care Center Government Code Section 16645.8(b) Sixty Day Notice

Dear Attorney General Lockyer:

I am writing on behalf of Service Employees International Union ("SEIU") Local 250 to provide you with a 60-day notice pursuant to Government Code Section 16645.8(b). SEIU Local 250 believes that Ensign Group, Inc. d.b.a. Sonoma Health Care Center (hereinafter "Sonoma") has impermissibly used state funds to "assist, promote or deter union organizing" in violation of Government Code Section 16645.7.

We request that you exercise your authority under Section 16645.7(c) to demand the production of records by Sonoma "sufficient to show that no state funds were used" to assist, promote or deter union organizing. If such records cannot be produced, or if

the records show that state funds were used for impermissible expenditures, we request that you commence a civil action against Sonoma under Section 16645.8 for injunctive relief, damages, civil penalties, and other appropriate equitable relief. In support of this request, SEIU Local 250 respectfully submits as follows:

Ensign Group, Inc. owns a nursing home called the Sonoma Health Care Center at 1250 Broadway in Sonoma, California. Sonoma is a participant in the state Medi-Cal program, and receives a majority of its total annual income through that program. We believe that Sonoma has already received more than $10,000 in Medi-Cal program funds during this calendar year. Gov't Code §16645.7.

On May 24, 2002, a union representation election will be held among Sonoma's employees. Starting on or about May 9, 2002, Sonoma began making expenditures to assist promote or deter union organizing. Gov't Code § 16645.7(a). Specifically, Sonoma has made expenditures to deter the organizing of its employees by SEIU Local 250. These expenditures include paying the fees and expenses of consultants to "research," "prepare," "plan," "coordinate," and "carry out" its campaign to "influence the decision of its employees" on whether to support SEIU Local 250. Gov't Code §§ 16645(ä), 16646(a).

Sonoma has contracted with Labor Relations Services, Inc., of Newport Coast, California, to deter union organizing. Representatives of Labor Relations Services, Inc. have been present at Sonoma every day since approximately May 9, 2002. Starting on or about May 9, 2002, representatives of Labor

Relations Services, Inc. have conducted approximately fifteen meetings with groups of Sonoma employees. These employee meetings are mandatory, take place on Sonoma's premises during work hours, and last for approximately 85 to 135 minutes. At least two of the individuals running these meetings are registered with the United States Department of Labor as direct contact persuaders. Sonoma employees have informed SEIU Local 250 that the purpose of these meetings is to convince them to vote against representation by SEIU Local 250 in the upcoming election.

Sonoma is also conducting one-on-one meetings with employees to deter them from organizing. These meetings are explicitly mandatory and are conducted on Sonoma's premises. Moreover, Sonoma is distributing anti-union literature to its employees, some of which is signed by Sonoma administrators. Finally, Sonoma supervisors have been campaigning against the union on Sonoma's premises during working hours. SEIU Local 250 believes that Sonoma's supervisors and employees have been compensated for their time spent in these activities to deter union organizing.

Based on the information available to us, we believe that Sonoma paid expenses associated with the above-mentioned activities from accounts where state Medi-Cal funds were commingled with other funds. Gov't Code § 16646(b). We further believe that Sonoma has failed to maintain records sufficient to show that no state funds were used for its anti-union activities as required by Section 16645.7(c).

In demanding records from Sonoma, you should be sure to include a demand for records showing that

supervisors and employees were not paid with state funds to take part in Sonoma's anti-union activities, and that they did not participate in those activities on time paid for by the state for the care of Medi-Cal recipients.

Please feel free to contact me with any questions regarding this matter.

Respectfully submitted,

Stephen P. Berzon

Operating Engineers Local Union No. 3
1620 South Loop Road
Alameda, CA 94502-7090
(510) 648-7400

Bill Lockyer
Attorney General
Attn: Ralph Lightstone
Department of Justice
1300 I Street, Suite 1740
Sacramento, CA 95814

Dear Mr. Lightstone:

I am the Director of Public Employees for Operating Engineers Local Union No. 3. Among my duties are to organize and direct the organizing in Public Employee Bargaining units. The Union recently organized a small bargaining unit in the [unreadable]. Taking advantage of newly amended Meyers-Milias-Brown Act, the Union demanded notice on the basis of a majority of cards in appropriate units. The employer has refused to recognize the Union for -approximately three months. The employer has hired an attorney to resist the Union organizing drive. The employer, the Rancho Murieta Community services District, is a grant recipient under Gov. Code § 16645.2 and has not complied with the record keeping requirement of 16645.2(c), segregating state money from general revenues. Therefore, the Rancho Murieta Community services District has violated Gov. Code § 16645.1 prohibiting use of state funds to assist, promote or deter union organizing.

Please contact me and I will provide any additional documents or other information you request. Thank you in advance for your assistance in this matter.

Sincerely,

Kurt Benefield
Director, Public Employees

May 23, 2002

Mr. William Lockyer
Attorney General
California Dept. of Justice
1300 I Street, 11th Floor
Sacramento, CA 95814

Re: Valley Health System

Dear Attorney General Lockyer:

I am writing to you on behalf of SEIU Locals 399 and 12IRN in accordance with Government Code Section 16645.8(b) to call to your attention the apparent unlawful use of state funds by Valley Health System to deter union organizing.

Valley Health System is a California Local Health Care District that owns and operates three acute care hospitals, including Moreno Valley Community Hospital ("Moreno Valley"). Valley Health System is a public employer, and it receives state funds. For the past two months, workers at Moreno Valley have been involved in union organizing activity with the assistance of SEIU Locals 12IRN and 399. Valley Health System has responded to the union organizing campaign by making expenditures to deter the union organizing efforts.

Among the expenditures Valley Health. System has made to deter union organizing is the compensated work time of its supervisors and employees while participating in the various components of its anti-union campaign. Supervisors

have participated in anti-union orientation and training sessions on work time. At these training sessions; supervisors have been instructed to campaign against the unions. In addition to paying supervisors to attend-these training sessions designed to deter union organizing, Valley Health System has also held mandatory group meetings for employees regarding unionization. The message that supervisors have conveyed to workers during these mandatory meetings is that the workers are better off without a union — these meetings are clearly an attempt "to influence the decision" of the employees about whether to support or oppose the union.

The workers who were required to attend anti-union meetings were not paid with separate checks for the time spent in these meetings. Thus, we have every reason to believe the expenditures to deter union organizing were paid from accounts where state funds were commingled with other funds.

SEIU Locals I21RN and 399 are prepared to provide you with specific dates and times when mandatory anti-union meetings took place. Please contact me to obtain this evidence or if you have any additional questions regarding this matter.

Sincerely,

Andrew Strom

Attorney for SEIU Local
121RN and SEIU Local 399

Beeson, Tayer & Bodine
Attorneys At Law, A Professional Corporation
1404 Franklin Street, Fifth Floor
Oakland, California 94612
(510) 625-9700

February 19, 2002

California Department of Justice
Public Inquiry Unit
P.O. box 944255
Sacramento, CA 94244-2550

Re: MV Transportation, Inc. and Teamsters Local 78 (Govt. Code § 16646)

Dear Madam or Sir:

In a letter dated February 6, 2002, I informed you of MV Transportation, Inc.'s violation of Government Code 16645, et seq. I have attached anti-union literature which MV Transportation, Inc. has distributed to its employees.

This literature unquestionably proves MV Transportation, Inc. is in violation of its obligation as a state contractor to remain neutral in a union organizing drive.

Please contact me if you need further information.

Very truly yours,

Sheila K. Sexton

MEMORANDUM

To: All San Leandro Division Employees

From: _____

Date: February 15, 2002

Subject: Rumor Control

A standard tactic in any union organizing drive is to float rumors that are designated to give the impression that merely voting in a union is the answer to all the problems in any business. As we look closely at those rumors, however, we find that they have no basis in truth.

Part of my job as the Division Manager is to counter those rumors with facts. The big rumor this week was that "going union" would help this operation with its relations with our customers. One remark was even made that public transit customers do not want to do business with union-free companies. Nothing could be further from the truth. Remember what was contained in ___ letter to you.

Fact: Laidlaw, a unionized operation represented by Teamsters local 78, the very same union to get your vote, LOST the East Bay Regional Center Contract when it was awarded to us . . . a union-free operation.

Fact: Paratransit Services, another unionized operation represented by the TEAMSTERS, just lost their contract in San Francisco.

Fact: All of the other providers are faced with EXACTLY the same challenges as we are and the

ones represented by the Teamsters have not been helped by the Teamsters at all.

Fact: MV Transportation is the only organization fighting on behalf of MV Transportation employees to improve routes, schedules and hours. Alex and I go to meetings with our customers at EVERY opportunity . I have NEVER seen a Teamster representative at ANY meeting to speak on behalf of MV Transportation employees or any union members.

One thing you will hear from me over and over between now and March 6 is:

If the Teamsters have the expertise, the commitment and the employee relations skills to run a Paratransit or Regional Center operation and if they think they have the inside track with the customers, then why in the world don't they bid to run an operation on their own and show us how to do it?

UNION RULES ! --. WILL THEY CONTROL YOU?

The Teamsters and their high pressure union pushers are trying to convince you that you are the union.

The fact is, according to the law, the Teamsters are required to file their Constitution (the Union Rules) with the U.S. Government. If you become Teamsters, you must live by 183 pages of rules they already have.

YOU DO NOT GET TO WRITE YOUR OWN SET OF RULES.... Like you would if you were really the Union.

Have the Teamsters and their high pressure pushers shown you their rules?

IF NOT, WHY NOT?

Here are just SOME of the things contained in their Constitution. As you can see, it would. give the Teamsters a great- deal of authority and control over you and your work life.

* * * * *

Beeson, Tayer & Bodine
Attorneys At Law, A Professional Corporation
1404 Franklin Street, Fifth Floor
Oakland, California 94612
(510) 625-9700

February 6, 2002

California Department of Justice
Public Inquiry Unit
P.O. box 944255
Sacramento, CA 94244-2550

Re: MV Transportation, Inc. and Teamsters Local 78 (Govt. Code § 16646)

Dear Madam or Sir:

This office represents Teamsters Local 78 which recently embarked upon an organizing campaign among MV Transportation, Inc.'s San Leandro-based employees. I am contacting your office to report MV Transportation's violations of California Government Code § 16645, to request that the Attorney General's office bring suit against MV Transportation pursuant to Government code § 16645.8(a), and to give notice, pursuant to Government C ode § 16645.8(b), that should the Attorney General fail to initiate such action Local 78 will itself initiate civil action against MV Transportation to enforce the applicable statute.

MT Transportation, from its San Leandro facility, provides Para transit services pursuant to a contract originating with the State of California Department of Developmental Services. As such, MV

is a "state contractor" within the meaning of Govt. code § 16645(c).

Govt. code § 16645.3 prohibits state contractors from taking any action to "deter union organizing" by its employees. Nonetheless, MV in the past few weeks has embarked upon an aggressive anti-union campaign to discourage its employees from supporting Local 78. This campaign so far has included mandatory employee meetings led by outside consultants. This consultant, from Cruz and Associates, a known union-busting firm, stated in one such meeting that it was not neutral with regard to the employee's organizing efforts, but rather was emphatically anti-union. Additionally, Local 78 has been forced to file several unfair labor practices charges with the National Labor Relations Board over MV's anti-union actions. Local 78 is documenting these and other violations and intends o seek full enforcement of the laws protecting the MV employees' right to organize.

Very truly yours,

Sheila K. Sexton

Palomar Pomerado Health
Administration
15255 Innovation Drive, Suite 204
San Diego, CA 92128-3410
(858) 675-5100

February 18, 2002

Mr. Ted Cahill
Organizer
California Nurses Association
425 West Broadway, Suite 111
Glendale, CA 91204

Re Letter Request for Information

Dear Mr. Cahill:

This letter acknowledges that Palomar Pomerado Health ("PPH") is in receipt of your letter to PPH's Board of Directors (the "Board"), dated February 11, 2002, in which you request certain PPH information and allege that the Board and its members have breached their fiduciary duties and misappropriated and/or improperly expended state funds. With respect to these allegations, PPH categorically denies that it, its Board, or the members thereof have engaged in any illegal, unethical or otherwise improper behavior in connection with PPH's registered nurses and their efforts to unionize.

As for the portion, of your letter requesting PPH information, you have asked PPH to: (1) publicly disclose all funds received by PPH from the State of California and identify the specific disbursements of such funds; and (2) "report the total amount and itemization of all expenditures made to

deter or influence the decisions of PPH Registered Nurses regarding the selection of the California Nurses Association as their exclusive collective bargaining representative."

To begin, we reiterate that none of the expenditures by PPH made in connection with PPH's registered nurses arid their recent efforts to unionize have improperly implicated any law, regulation, or ethical obligation on the part of PPH cc its Board. That being said, we deem your letter and the information requests therein as requests for public disclosure of PPH records pursuant to the Public Records Act, Government Code Section 6250 *et seq.* (the "PRA"). In this regard, your letter does not reasonably describe identifiable or specific PPH records that may be subject to disclosure under the PRA, as required by California Government Code Section 6253(b).

As a result, PPH cannot provide you with records containing the information you have requested until PPH receives a request conforming with the PRA.

Very truly yours,

Norman F. Gruber

President and Chief Executive Officer

Van Bourg, Weinberg, Roger & Rosenfeld
A Professional Corporation
1006 4th Street, Suite 1050
Sacramento, CA 95814
(916) 443-6600

May 20, 2002

Suzanne M. Ambrose
Deputy Attorney General
Office of the Attorney General
Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

Re: *Chamber of Commerce of U.S., et al. v. Bill Lockyer, as Attorney General, et al.* USDC, Central District, Case No. SACV02377 DOC (ANX)

Dear Ms. Ambrose:

I am writing to follow up on your April 29th, 2002 letter in which you sent me a copy of the Chamber of Commerce lawsuit that was filed in early April in the Central District. As you may know, our law firm is the largest Union-side labor law firm on the West Coast. We represent many local unions and federations of various unions. My clients are very interested in the Cedillo Bill. As you may have noticed, several unions in the Sacramento Valley have been sending letters to the Attorney General's Office notifying the Attorney General of probable violations of the Cedillo law. As such, it would be very helpful for the labor movement in general, and

my clients in particular, if you keep me aware of the status of any injunction. An order from the Court denying an injunction will have a significant positive effect on various organizing drives that are going on here in the valley.

I believe you will find, as you are introduced to factual circumstances of the various Cedillo violations, that California employers as a matter of course use public funds to finance anti-Union campaigns that are at times quite vicious. Please do not hesitate to contact me if you are in need of factual examples of the use of public money to affect the outcome of an organizing drive.

Thank you for your attention to this matter.

Sincerely,

Matthew J. Gauger

Feysan Lodde
Alex Lodde
M V Transportation, Inc.
50 Elmira Street
San Francisco, CA 94124

RE: California Government Code Section 16645.7

Dear Sirs:

California Government Code section 16645.7 effective January 1, 2001, provides that a private employer receiving state funds in excess of $10,000 per calendar year on account of its participation in a state program "shall not use any of those funds to assist, promote, or deter union organizing." Section 16645.7, subdivision (c), provides that any private employer subject to this statute who makes expenditures to assist, promote, or deter union organizing must maintain records sufficient to show that no state funds were used for those expenditures. The Attorney General of California is charged with enforcement of the provisions of this statute, and any employer subject to this law is required to provide these records to the Attorney General upon request.

California Government Code section 16645.3, subdivision (a), provides that no state contractor "shall assist, promote, or deter union organizing by employees who are performing work on a service contract, including a public works contract, for the state or a state agency." Section 16645.3, subdivision (b), provides that a state contractor that violates section 16645.3 subdivision (a), is "liable for a civil penalty of one thousand dollars ($1,000) per employee per violation. The Attorney General of California is charged with enforcement of the

provisions of this statute under California Government Code section 16645.8.

It has been reported to the Attorney General that MV Transportation, Inc. ("MV Transportation") receives over $10,000 per calendar year as a result of its participation in the State's Medi-Cal program. Furthermore, it has been reported that MV Transportation provides paratransit services to Medi-Cal beneficiaries pursuant to a contract with the California Department of Health Services. This office has received a written notice pursuant to Government Code section 16645.8, subdivision (b), alleging that, within the past several months, MV Transportation has made expenditures to deter union organizing, and has taken action to deter union organizing by its employees.

Specifically, the notice alleges that MV Transportation has attempted to influence its employees in deciding whether to become members of a labor organization. The notice alleges that Vincent Weber, Safety Director, and Duane Crowley, Assistant Division Manager, asked employees about their union sentiments. In addition, the notice alleges that Folole Ione, Dispatcher, directed a driver's aide not to sign a labor organization authorization card. The notice also alleges that Mark Elias, Division Manager; Vincent Weber, Safety Director, John Siragusa, Customer Relations Manager; and Alex and Feysan Lodde, Owners of MV Transportation, conducted meetings with groups of workers on work time. The notice further alleges that MV Transportation employees were compensated for the time that they spent at these meetings or during the inquiries from Vincent Weber,

Duane Crowley, and Folole Ione. The notice alleges that MV Transportation improperly used State Medi-Cal funds to pay for the salaries of employees and managers during their attendance at the alleged anti-anion organizing meetings and activities.

On this basis, it is alleged that MV Transportation has taken action to deter union organizing by its employees who were performing work on a service contract for a state agency within the meaning of section 16645.3, after January 1, 2001. Furthermore, it is alleged that MV Transportation made expenditures to deter union organizing within the meaning of section 16645.7, after January 1, 2001. These expenditures are alleged to include, but not be limited to:

> The salaries of Mark Elias, Vincent Weber, John Siragusa, Duane Crowley, Folole Ione, Alex Lodde, Feysan Lodde, and any and all MV Transportation supervisory/management personnel during times spent in attending the meetings, and other alleged anti-union activity and/or inquiries described above, as well as time spent in preparation, planning, and coordination of these meetings;
>
> The salaries of any and all employees of MV Transportation who received compensation for time spent attending such meetings and other alleged anti-union activity and/or inquiries; and
>
> Any costs of printing, duplicating, mailing, or distributing any documents given to MV Transportation employees in connection with any such meetings.

Please, therefore, provide no later than February 25, 2002, "records sufficient to show that no state funds were used" for these expenditures. In particular, please provide records sufficient to show the source of funding for these expenditures and sufficient to show that the Medi-Cal program did not reimburse MV Transportation for any time spent by any MV Transportation employees attending or planning for these meetings or involvement in any other alleged anti-union activity and/or inquiries.

Thank you for your prompt attention to this matter. I look forward to receiving your response.

Sincerely,

REGINA J. BROWN
Deputy Attorney General

For BILL LOCKYER
Attorney General

June 24, 2002

Hon. William Lockyer
Attorney General
State of California
California Department of Justice
1300 I Street, 11th Floor
Sacramento, CA 95814

Re: Palomar Pomerado Health System
Misappropriation of Public Assets & Breach of Charitable Trust

Dear Attorney General Lockyer:

On behalf of the California Nurses Association (CNA), I am writing to inform you that CNA and the above employer have resolved our differences. CNA has now achieved collective bargaining recognition for the almost 600 Registered Nurses employed by the above system.

For that reason, CNA hereby withdraws and dismisses with prejudice the claim we filed with your office regarding conduct violating the provisions of AB 1889. We strongly encourage you to take no further action against the employer or any of its public officials, including its Board Members, with respect to this issue.

On behalf of the Registered Nurses we represent, thank you for your assistance in assuring that their right to CNA representation has prevailed.

Sincerely,

David M. Johnson
Southern California Director

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Case No. SAC V02377GLT(ANx)

The Chamber of Commerce of the United States, *et al.*

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bonta R.N., Dr., P.H. as the Director of the California Department of Health Services and DOES 1 through 10,
Defendants,

and

American Federation of Labor and Congress of Industrial Organizations and California Labor Federal, AFL-CIO
Intervenors.

DECLARATION OF GENE MORROW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

DECLARATION OF GENE MORROW

I GENE MORROW, declare and state as follows:

1. The following matters stated in this declaration are true of my personal knowledge.

2. I am a Research Analyst II in the Long Term Care Reimbursement Unit of the Rate Development Branch of the California Department of Health Services (Department). I have been employed within the Rate Development Branch of the Department since 1984, with the exception of approximately three years that I was employed with the California Department of Transportation. In order for California to obtain federal financial participation for payments made under the Medi-Cal program, federal regulations require the Department to submit and obtain federal approval of a State Plan. My duties include the preparation of amendments to provisions of the federally approved State Plan that concern Medi-Cal reimbursement policy for long-term care providers. The Department must obtain approval of state plan amendments (SPAs) from the United States Centers for Medicare and Medicaid Services (CMS), which is the federal agency responsible for administering both the Medicare and Medicaid programs.

3. I participated in the Department's preparation of SPA 02-006, which was submitted to CMS on February 28, 2002. A true and correct copy of the Department's request for approval of SPA 02-006 is attached to this declaration as Exhibit A. SPA 02-006 amends various portions of the state plan that set forth the rate setting methodology for Medi-

Cal reimbursement rates for long-term care providers, hospitals, federally qualified health centers, and rural health clinics. Under longstanding State Plan provisions, providers' allowable costs have played a role in determining the ultimate reimbursement rates paid to these providers. For years, the Department's policy, as reflected in the State Plan, has been to define a provider's allowable costs as those that would be allowable under Medicare reimbursement principles. SPA 02-006 amended the State Plan to clarify that allowable costs do not include expenditures to assist, promote, or deter union organizing to the extent such expenditures are paid by the provider with State funds.

4. On April 5, 2002, CMS approved SPA 02-006. A true and correct copy of CMS' approval letter and the approved state plan provisions are attached to this declaration as Exhibit B to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Sacramento, California, this 1st day of August 2002.

/s

GENE MORROW

DEPARTMENT OF HEALTH SERVICES
714 P Street, Room 1253
P.O. Box 942732
SACRAMENTO, CA 94234-73230
(916) 654-0391

February 28, 2002

Ms. Linda Minamoto
Associate Regional Administrator
Division of Medicaid-Region IX
Department of Health and Human Services
Centers for Medicare and Medicaid Services
75 Hawthorne Street, Fourth Floor
San Francisco, CA 94105-3903

Dear Ms. Minamoto:

STATE PLAN AMENDMENT NO. 02-006

Enclosed is California's State Plan Amendment (SPA) No. 02-006 which includes changes to the State Plan for long term care, hospitals and Federally Qualified Health Clinics or Rural Health Clinics. These changes do not affect the rate setting methodology, but clarify what may be included as allowable costs. The Department of Health Services (DHS) is requesting an effective date of August 1, 2002.

In these amendments, DHS is proposing to add Section II.L to Attachment 4.19-A, Section I to Attachment 4.19-B, and Section II.B.4 to Attachment 4.19-D to clarify that allowable costs do not include

expenditures to assist, promote, or deter union organizing to the extent that such expenditures are paid by the provider with state funds.

Included are the amended pages for the SPA for all three of the above referenced attachments. Should you or your staff have any questions, please contact Mr. Roberto B. Martinez, Chief of the Medi-Cal Policy Division, at (916) 657-1542.

Sincerely,

Gail L. Margolis, Esq.
Deputy Director
Medical Care Services

L.

1) Allowable costs, as that term is used in Section II.A.2, and elsewhere in this Attachment 4.19-A, shall not include provider expenditures to assist, promote, or deter union organizing to the extent such expenditures are paid by the provider with State funds. Definitions applicable to this paragraph L are set forth below in subparagraphs 2) and 3).

2) "Assist, promote, or deter union organizing" means any attempt by the provider to influence the decision of its employees in California, or the California employees of its subcontractors, regarding either of the following:

(a) Whether to support or oppose a labor organization that represents or seeks to represent employees

(b) Whether to become a member of any labor organization.

3) "State funds" means California State Treasury funds or California State special or trust funds received by the provider on account of the provider's participation in a California state program. If State funds and other funds are commingled, any expenditures to assist, promote, or deter union organizing shall be allocated between State funds and other funds on a pro rata basis

4) Any costs, including legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning, or coordination of, or carrying out, an activity to assist, promote, or deter union organizing shall be

treated as paid or incurred for that activity

5) To the extent the costs are not for expenditures to assist, promote, or deter union organizing, reasonable costs incurred are allowable for activities, such as:

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement.

(b) Allowing a labor organization or its representatives access to the provider's facilities or property.

(c) Performing an activity required by federal or state law or by a collective bargaining agreement.

(d) Negotiating, entering into, or carrying out a voluntary recognition agreement with a labor organization.

J. Payment for Services for Recipients with Medicare/Medi-Cal or Child Health and Disability Program (CHDP) Coverage

Where a recipient has coverage under the Medicare or the CHDP program, DHS will supplement the payment from those programs not to exceed the prospective payment rates established under this Supplement.

K. Limitations of Allowable Costs – State Funds

1. To the extent that any FQHC or RHC receives cost based reimbursement under subparagraphs (A) (2) or (F) (2), allowable costs shall not include provider expenditures to assist, promote, or deter union organizing to the extent such expenditures are paid by the provider with State funds. Definitions applicable to this paragraph I are set forth below in subparagraphs 2 and 3.

2. "Assist, promote, or deter union organizing" means any attempt by the provider to influence the decision of its employees in California, or the California employees of its subcontractors, regarding either of the following:

(a) Whether to support or oppose a labor organization that represents or seeks to represent employees.

(b) Whether to become a member of any labor organization.

3. "State funds" means California State Treasury funds or California State special or

trust funds received by the provider on account of the provider's participation in a California state program. If State funds and other funds are commingled, any expenditures to assist, promote, or deter union organizing shall be allocated between State funds and other funds on a pro rata basis.

4. Any costs, including legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning, or coordination of, or carrying out, an activity to assist, promote, or deter union organizing shall be treated as paid or incurred for that activity.

5. To the extent the costs are not for expenditures to assist, promote, or deter union organizing, reasonable costs incurred are allowable for activities, such as:

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement.

(b) Allowing a labor organization or its representatives access to the provider's facilities or property.

(c) Performing an activity required by federal or state law or by a collective bargaining agreement.

(d) Negotiating, entering into, or carrying out a voluntary recognition agreement with a labor organization.

3. For purposes of determining reasonable compensation of facility administrators, pursuant to Chapter 9 of the CMS Provider Reimbursement Manual (HIM 15) — reproduced in full at Paragraph 5577 of the CCH Medicare and Medicaid Guide, the State shall conduct its own survey. Based on the data collected from such surveys, the State shall develop compensation range tables for the purpose of evaluating facility administrator compensation during audits of those facilities.

   For purposes of this section, "facilities" are defined as: acute care, long term care (skilled nursing, intermediate care, intermediate care for the developmentally disabled, intermediate care for the developmentally disabled habilitative and nursing), Federally Qualified Health Centers, and Rural Health Clinics.

4. (a) Allowable costs shall not include provider expenditures to assist, promote, or deter union organizing to the extent such expenditures are paid by the provider with State funds.

   Definitions applicable to this paragraph 4 are set forth below in subparagraphs (b) and (c).

   (b) "Assist, promote, or deter union organizing" means any attempt by the provider to influence the decision of its employees in California, or the California employees of its subcontractors, regarding

either of the following:

(i) Whether to support or oppose a labor organization that represents or seeks to represent employees.

(ii) Whether to become a member of any labor organization.

(c) "State funds" means California State Treasury funds or California State special or trust funds received by the provider on account of the provider's participation in a California state program. If State funds and other funds are commingled, any expenditures to assist, promote, or deter union organizing shall be allocated between State funds and other funds on a pro rata basis.

(d) Any costs, including legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning, or coordination of, or carrying out, an activity to assist, promote, or deter union organizing shall be treated as paid or incurred for that activity.

(e) To the extent the costs are not for expenditures to assist, promote, or deter union organizing, reasonable costs incurred are allowable for activities, such as:

(i) Addressing a grievance or negotiating or administering a collective bargaining agreement.

(ii) Allowing a labor organization or its representatives access to the provider's facilities or property.

(iii) Performing an activity required by federal or state law or by a collective bargaining agreement.

(iv) Negotiating, entering into, or carrying out a voluntary recognition agreement with a labor organization.

III. AUDITS

A. Except for DP/NFs, subacute, pediatric subacute, transitional inpatient care units, NF-As, ICF/DDs and state-operated facilities, a minimum of 15 percent of cost reports will be field audited by the Department each year. Facilities identified for audit shall be selected on a random sample basis, except where the entire universe of a class is selected for audit. Field audits may be restricted to facilities that have a complete year of reporting. The sample size for each shall be sufficiently large to reasonably expect, with 90 percent confidence, that it will produce

a sample audit ratio which varies from the estimated class population audit ratio by not more than two percent. Other facilities may be audited as necessary to ensure program integrity. The results of federal audits, where reported to the State, may also be applied in determining the audit adjustment for the ongoing rate study.

B. The labor data reported by providers shall be audited. Iii the event that facilities are inconsistently reporting their labor costs in the OSHPD data, the Department will adjust the data utilized to develop the labor index so that the correct amount will be reflected. If the labor data used in developing the labor index is adjusted, the State Plan will be amended to provide the specific methodology for such adjustments.

C. Reports of audits shall be retained by the State for a period of not less than five years, in accordance with 42 CFR 433.32.

D. Providers will have the right to appeal findings which result in an adjustment to program reimbursement or reimbursement rates. Specific appeal procedures are contained in Section 14171 of the Welfare and Institutions Code, and Article 1.5 (Provider Audit Appeals) of Title 22, California Code of Regulations. See Appendix 2.

* * * * *

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
San Francisco Regional Office
75 Hawthorne St., Suite 408
San Francisco, CA 94105

Apr - 5 2002

Gail l. Margolis, Deputy Director
Medical Care Services
Department of health Services
714 P Street, Room 1253
Sacramento, CA 95814

Dear Ms. Margolis;

Enclosed is a copy of California State plan amendment (SPA) No. 02-006, which we have approved effective August 1, 2002. This SPA clarifies what may be included as allowable costs for long term care, FQHCs/RHCs, and hospitals. Allowable costs may not include expenditures to assist, promote, or deter union organizing to the extent that such expenditures are paid by the provider with State funds.

Questions concerning this approval should be directed to Pat Daley at (415) 744-9592.

Sincerely,

Linda Minamoto
Associate Regional
Administrator
Division of Medicaid

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Case No. SACV02377 GLT (ANx)

The Chamber of Commerce of the United States, *et, al.*

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and Does 1 through 10,

Defendants,

and

American Federation of Labor and Congress of Industrial Organizations and California Labor Federal, AFL-CIO,

Intervenors.

DECLARATION OF FRANK VANACORE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

DECLARATION OF FRANK VANACORE

I, FRANK VANACORE, declare and state as follows:

1. The following matters stated in this declaration are true of my personal knowledge.

2. I am the Chief of the Audit Review and Analysis Section of the Audits and Investigations program of the California Department of Health Services (Department). I have held this position since April 1, 1999. Prior to that, I was a field audit supervisor within the Financial Audits Branch field office in Sacramento. I held that position from April 1992 to April 1999.

3. The section I supervise is responsible for the issuance of Medi-Cal cost report forms that institutional providers are required to complete and return to the Department. The institutional providers to whom the Department sends these cost report forms are acute care hospitals, intermediate care facilities for the developmentally disabled (ICF/DDs), intermediate care facilities for the developmentally disabled-habilitative (ICF/DD-Hs), intermediate care facilities for the developmentally disabled-nursing (ICF-DD-Ns), federally qualified health centers (FQHCs), and rural health clinics. The California Office of Statewide Health Planning

and Development (OSHPD) is responsible for the distribution of Medi-Cal cost report forms that skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) must complete and return to OSHPD. My section also follows up on the receipt and processing of all completed institutional cost reports that it distributes. This processing includes acceptance of the cost reports, auditing cost reports, and maintaining custody of the cost reports pending completion of the auditing process. My section also obtains the Medi-Cal cost reports that SNFs and ICFs submit to OSHPD. Auditors from Audits and Investigations audit these cost reports. The Department's Rate Development Branch then uses these audited costs for establishing reimbursement rates for these providers.

4. My section has also been responsible for sending certification forms to various providers that participate in the Medi-Cal program in order for these providers to certify, in accordance with California Government Code section 16645.7, that they will not use any state funds to assist, promote, or deter union organizing. To date, the Department has sent these forms to Medi-Cal participating long-term care providers, such as SNFs, ICFs, ICF/DDs, ICF/DD-Ns, ICF/DD-Hs, and to Medi-Cal participating FQHCs and rural health clinics.

5. the Medi-Cal program is California's Medicaid program. The program is paid for with both federal and state funds. On the other hand, the Medicare program is a purely federal program. To the best of my knowledge, the federal Medicare laws do not govern the Medicaid program. However, the federal Medicaid laws do govern the Med-Cal

program. I am not aware of anything in the federal Medicaid laws that obligates the Department to establish reimbursement rats for long-term care providers such as SNFs and ICF-DDs, or for acute care hospitals, in any particular manner. For example, to my knowledge, there is nothing in the federal Medicaid laws, that requires the Department to establish reimbursement rates for these providers based on the providers' costs, nor is there anything in the federal Medicaid laws that prohibits the Department from doing so. Moreover, to the extent that the Department has chosen to establish rates for these providers based, to some extent on provider costs, there is nothing in the federal Medicaid laws that I am aware of that governs which costs are allowable for any category of SNFs or ICF-DDs, for reimbursement or any other purpose. In summary, to the best of my knowledge, the federal Medicaid laws are silent as to the specific methodology the Department is to use in establishing reimbursement rates for long-term care providers and hospitals.

6. It is my understanding that there are some federal Medicaid laws which provide that the reasonable costs of FQHCs and rural health clinics, as determined in accordance with Medicare cost principles, are to play some role in the establishment of Medi-Cal reimbursement rates for services by these providers. While the federal Medicaid laws do not require the Department to use provider costs in establishing Medi-Cal rates for long-term care providers or acute care hospitals, the Department has chosen to use provider costs in the rate-setting process for long-term care providers and for some acute care hospitals. While no federal law requires the Department to do so, the Department's

longstanding policy has been to use federal Medicare rules in determining allowable costs that are used in the process of establishing reimbursement rates for long-term care providers and acute care hospitals. Audits from the Audits and Investigations program of the Department are responsible for conducting audits to determine the allowable costs of providers in order for that data to be used in the rate-setting process.

7. The United States Centers for Medicare and Medicaid Services (CMS) is the federal agency that administers both the federal Medicare and Medicaid programs. CMS was formerly known as the Health Care Financing Administration. CMS has adopted longstanding federal regulations and guidelines for determining whether costs are reasonable and allowable for reimbursement purposes under the federal Medicare program. These are the standards that Audits and Investigations applies in determining whether costs are reasonable and allowable for the purpose of setting reimbursement rates under the Medi-Cal program. Many of the specific guidelines that CMS has adopted are contained in the federal Medicare program's Provider Reimbursement Manual. Federal guidelines related to whether a provider's costs related to labor union activities are allowed are contained in sections 2180.1 through 2180.3 of the Provider Reimbursement Manual. These federal guidelines have been in effect for at twenty years according to the historical notes under each section. A true and correct copy of sections 2180.1 through 2180.3 of the Provider Reimbursement Manual is attached to this declaration as Exhibit A.

8. Section 2180.1 of the Provider Reimbursement Manual states that reasonable costs incurred by providers in activities consistent with the National Labor Relations Act (NLRA) may represent allowable costs of operations, "provided such costs are not directly related to influencing employees with respect to unionization." Section 2180.1 further states that "costs incurred for activities directly related to influencing employees respecting unionization or related to attempts to coerce employees or otherwise interfere with or restrain the exercise of employee rights under the NLRA are not allowable costs for program purposes. Such costs are unallowable whether such activities are performed directly by the provider or through an independent contractor, consultant or outside attorney."

9. California Government Code section 16645.7 requires certain private employers who make expenditures to assist, promote, or deter union organizing to maintain records sufficient to show that no state funds were used for those expenditures. Based on my experience in the audit field, I believe that Medi-Cal providers subject to this law can maintain a record of such expenditures without undue burden or cost to the provider. For example, a subsidiary general ledger account could be established to accumulate union related costs, either allowable and/or non-allowable. When a Medi-Cal cost report is prepared, it would be a simple matter to identify the non-allowable costs in this account and either exclude them from inclusion in the cost report, or if included, make an adjustment to remove them. As another example, the Department received e-mail correspondence from a representative of a provider regarding that provider's plans for complying with

Government Code section 16645.7. This person stated: "we propose to establish a separate general ledger account number and a separate line item as a contra-income account item in the 'other income' (donations and administrative income) section of our monthly interim financial statements. Then starting in May 2202, we can keep track of this kind of expense that we may incur. We will also highlight any expenses we incur as a footnote in our annual audited financial statements." A true and correct copy of this e-mail correspondence from this provider is attached to this declaration as Exhibit B.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Sacramento, California, this 2nd day of August 2002.

/s/

FRANK VANACORE

* * * * *

REIMBURSEMENT FOR COSTS INCURRED IN RELATION TO UNION ACTIVITIES (Prov. Reimb. Man., Part I, § 2180)

[¶ 5999Z-55] Labor Union Organizing Activities (Prov. Reimb. Man. Part I, § 2180.1)

Reasonable costs incurred by providers in activities consistent with the National Labor Relations Act (NLRA) may present allowable costs of operation, provided such costs are not directly related to influencing employees with respect to unionization and further provided such costs are not unreasonable in amount. The NLRA imposes responsibilities and limitations on both management and labor. Management must have the knowledge and skill to deal with their employees and the wide range of labor relations issues in order to maintain an effective working environment. These rights and responsibilities of management encompass various activities such as written and oral communication with employees, consultations with attorneys or management advisors, and collective bargaining with union representatives. Unless the provider's activities are unauthorized or prohibited by the NLRA or these guidelines, or unless the costs incurred for such activities are unreasonable in amount or unnecessary, they will be allowable.

Reasonable costs incurred to keep employees informed of issues and to keep the lines of communication open between employees and employers are usually necessary and proper as they are part of the normal personal management and, therefore, may be allowable costs, provided such costs

are not directly related to influencing employees with respect to unionization.

Costs incurred for activities directly related to influencing employees respecting unionization or related to attempts to coerce employees or otherwise interfere with or restrain the exercise of employee rights under the NLRA are not allowable costs for program purposes. Such costs are unallowable whether such activities are performed directly by the provider or through an independent contractor, consultant or outside attorney.

With respect to allowable costs for services furnished, only the reasonable portion of the total costs incurred will be considered for reimbursement purposes. Expenses which are extraordinary in amount or kind, or unreasonably exceed expenditures common in the health care field for activities related to unionization, are not allowable costs.

Example: Reasonable costs incurred to furnish literature to employees or management personnel explaining their rights and responsibilities under the NLRA are allowable costs. Costs incurred to furnish literature designed to influence employees respecting unionization or to teach techniques for influencing employees respecting unionization are not allowable costs.

Example: Consultants and/or attorneys retained by a provider may be needed at times to familiarize supervisors and employees with labor laws. Therefore, reasonable costs incurred by a provider in seeking legal advice or counsel specifically on union activity matters, such as informing provider management and supervisory personnel regarding their legal rights and

responsibilities under the NLRA with regard to union organizing, are a necessary part of operations and are allowable costs.

Example: Reasonable costs incurred by a provider in providing training to supervisory personnel on union activity matters which is a part of normal personnel management are necessary and proper as part of the business operations of a provider and, therefore, are allowable costs, provided such training is not designed or timed to influence employees with respect to unionization.

Example: Provider activities which impact on wage or benefit programs, because they are designed to influence employees with respect to unionization, are not related to patient care and, therefore, are not allowable costs for Medicare program purposes.

* * * * *

.50 Manual revisions.—

Revision No. 261

[The following is the text of Trans. No. 261 (Jan. 1982):] Sec. 2180, *Reimbursement for Costs Incurred in Relation to Union Activities*, was added to the *Provider Reimbursement Manual* in June 1979 Transmittal No. 2180, to clarify our policy with respect to such costs. The policy statement articulated our view that reasonable costs incurred by a provider for collective bargaining and related activities are necessary to maintain the continued operation of the provider, and such costs are therefore related to patient care within the meaning of regulations at 42 CFR § 405.451. We also stated, however, that costs incurred for activities directly related to influencing employees respecting proposed

unionization (e.g., through furnishing literature to employees opposing union membership or training management to oppose unionization) are not sufficiently related to patient care and therefore may not be reimbursed.

At the request of a number of providers as well as hospital associations, we agreed to reexamine the policy expressed in § 2180, and on October 21, 1980, we published the § 2180 provisions in the *Federal Register*, 45 FR 69561, to solicit public comments on the policy. The *Federal Register* notice explained that comments from interested parties would be useful, since we had not had occasion o review the application of our general policy to factual situations.

In response to this notice, we received numerous comments which were summarized in a final notice published on January 16, 1981, 46 FR 3983. Having analyzed and reviewed the comments received, we concluded that further clarification of our policy was necessary, and we noted our intention to provide such clarification through a manual revision.

Since the January 1981 publication, review and consideration of the § 2180 policy statement and its practical application has continued. We recognize that the National Labor Relations Act (NLRA) guarantees certain rights to both employers and employees with respect to labor union organizing activates. Similarly, the NLRA imposes responsibilities and limitations on both management and labor. We also recognize the responsibility of HHS and of HCFA to establish policy not consistent with that established by the Congress in enacting the NLRA. In our January *Federal Register* notice, we

indicated that we had never intended the § 2180 policy statement to preclude reimbursement for reasonable costs associated with communicating "facts and opinions" about unionization efforts to provider employees, nor had we intended to preclude reimbursement for the reasonable cost of retaining consultants and attorneys to familiarize provider management and labor with provisions of the NLRA. These activities as well as those associated with the collective bargaining process are authorized by NLRA, and reasonable costs attributable thereto are legitimately related to efficient delivery of health care.

Given our policy that reasonable costs of distributing information to employees and obtaining outside consultation with respect to union organizing activities are allowable, we have been unable o devise an administratively practicable way of distinguishing the portion of such costs incurred "with the intent to influence employees." The attempt to draw such general distinctions places undue administrative burdens on fiscal intermediaries to analyze providers' motivations and allocate costs between those attributable to "persuasion" and those attributable to "information."

We have therefore decided to clarify our stated policy by revising § 2180.1 [¶ 5999Z-55] to acknowledge that reasonable costs incurred in connection with union organizing activities are related to patient care, including costs of informing employees of their rights and responsibilities under the NLRA, communicating management's position with respect to unionization, and obtaining advice and consultation of attorneys or consultants with respect to such activities. Costs claimed for activities

which are not authorized, or which are prohibited by the NLRA will continue to be disallowed as unreasonable and unrelated to the efficient delivery of needed health services. Additionally, costs that are excessive or that are incurred for unnecessary management activities will not be considered reasonable and will not be reimbursable under the Medicare program.

This revision constitutes a further clarification of existing policy. Costs reports subject to the reopening provisions specified in regulations at 42 CFR 405.1885 should be reopened where intermediaries had disallowed costs under Transmittal No. 218, dated June 1979, but which would be considered allowable and reasonable under this issuance.

* * * * *

Revision No. 309

[The following is the text of Trans. No. 309 (Apr. 1984):] Sec. 2180.1, *Labor Union Organizing Activities*, is revised pursuant to Section 107 of the Tax Equity and Fiscal Responsibility Act of 1982, which provides that costs incurred for activities directly related to influencing employees respecting unionization are not allowable costs for Medicare reimbursement purposes. Thus, these activities do not represent allowable costs for program purposes even through they may be acceptable activities under the Labor Management Reporting and Disclosure Act [sic] (LMRDA (P.L. 86-257)).

* * * * *

[¶ 5999Z-56] Collective Bargaining (Prov. Reimb. Man. Part I, § 2180.2)

Reasonable expenses incurred by a provider for collective bargaining and related activities, unless disallowed under Sec. 2180.1 [¶ 5999Z-55] are allowable costs, provided the activities are permitted by the NLRA. Contract negotiations and any procedures which flow from enforcement of contract terms, whether in a collective or individual setting, are necessary to maintain the continued operation of the provider, and, thus, are a precondition for the delivery of health services.

Example: The cost of the services of management's representative in food-faith collective bargaining activities is an allowable cost.

Example: Consultants and/or attorneys fees associated with collective bargaining activities in violation of the NLRA are not allowable costs.

* * * * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case No. 02-CV-377-GLT-(ANX)

THE CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*

Plaintiffs,

v.

BILL LOCKYER, *et al.*
Defendants,

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS and CALIFORNIA LABOR FEDERATION, AFL-CIO,

Intervenors.

DECLARATION OF FRED AZCARATE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

DECLARATION OF FRED AZCARATE

I, FRED AZCARATE, do hereby declare:

1. I am the Executive Director of Jobs with Justice and Jobs with Justice Education Fund.

2. Jobs with Justice Education Fund received a one-year grant in the year 2002 through

The New World Foundation. The New World Foundation sent me notification of this grant in a letter dated January 31, 2002. Enclosed with this letter was The New World Foundation's grantee agreement. The letter from The New World Foundation informed me that I was required to sign the grantee agreement in order to begin receiving payments. A true and correct copy of this letter and the enclosed grantee agreement is attached to this declaration as Exhibit A.

3. Jobs With Justice received a grant from The Solidago Foundation, Inc. in the year 2000. The Solidago Foundation informed me that, as a condition of receiving his grant, I was required to sign a grant agreement. A true and correct copy of this grant agreement is attached to this declaration as Exhibit B.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct.

Executed on August 16, 2002 in Washington, D.C.

By: /s/

Fred Azcarate

January 31, 2002

Mr. Fred Azcarate
Jobs with Justice Education Fund
501 Third Street, NW
Washington, DC 20001

Dear Mr. Azcarate:

I am pleased to inform you that the Board of Directors of The New World Foundation has approved a grant from the Phoenix Fund of $15,000.000 for one year, FY '02, to Jobs with Justice Education Fund in support of its work.

Please note the conditions set forth in the enclosed grantee agreement and as an indication of your acceptance of these conditions, sign and return it so that payment can be initiated.

If you have any questions pertaining to your grant, Minnette Coleman, our Grant Administrator at (212) 497-3471 will be happy to assist you.

I join the Board in expressing enthusiasm for your efforts and satisfaction that the Foundation is able to provide support for your work.

With best wishes,

Colin Greer
The New World Foundation

THE NEW WORLD FOUNDATION

FY 2001 Grant# 02-64
Date Authorized; 1/29/2002

AGREEMENT BY GRANTEE

Grantee: Jobs with Justice Education Fund

Amount/Grant:$15,000.00
Period of Time for which grant is applicable: 1/29/2002 to 1/29/2003

This grant will be renewed for -0- additional year(s) if reports are properly filed and the renewal is approved by he President of The New World Foundation after staff has confirmed that the program is developing well.

Grant Payout Schedule

3/1/2002	$5,000.00		Scheduled
6/15/2002	$5,000.00		Scheduled
9/15/2002	$5,000.00		Scheduled

Grants for over $10,000 will be paid according to the above schedule with a minimum payment of $5,000 per period.

As a condition to the receipt of a grant in the amount of $15,000.00 made by the New World Foundation (the "Foundation"), the undersigned (the "Grantee") hereby agrees to the following:

1. Purpose: The grant is made for the following purpose:

in support of its work

2. Repayment:

The Grantee shall repay to the Foundation any portion of the amount granted which is not used for the purposes of the grant.

3. Reporting/Accounting

The Grantee shall submit to the Foundation full and complete reports on the manner in which the funds granted have been spent and the progress made in accomplishing the purpose of the grant. A full narrative report and financial statement are required. Such reports shall be furnished to the Foundation promptly at the close of the g rant period, (one calendar year from the date of the award). If the grant funds are in support of a particular project of the grantee organization, then the grantee shall submit a narrative and financial report showing income and expenditures for the project. The Grantee shall make its books and records available o the Foundation at reasonable times, if requested.

4. Prohibited Activities

The Grantee shall not use any of the grant funds:

- Except for the program represented in the application and for the purposes for which granted by the Board of Directors of the Foundation.

- For any activity or purpose which is prohibited by law, particularly as defined in the application sections of the Internal

Revenue Code and as consistent with the organization's particular tax exempt status.

5. Violations

It is understood that the Foundation has the right to withhold any future payments under this grant or any other grant to the Grantee in the event that it has any reason to believe that the Grantee has used the grant funds other than for the purpose for which granted, or has otherwise violated any of the provisions of this Agreement.

ORGANIZATION: Jobs with Justice Education Fund

SIGNED BY:

_____

TITLE: _____
DATE _____

Solidago Foundation, Inc. Grant Agreement

The Solidago Foundation Inc. (Grantor) has awarded a grant of $5000.00 to Jobs with Justice (Grantee). This grant is to be used for your project to develop and disseminate FTAA materials.

Grantee agrees and consents to the following conditions of the grant:

1. Grantee shall use the grant solely for the purposes stated above, and Grantee shall repay the Grantor any portion of the amount granted which is not used for the purposes of the grant;

2. Grantee shall submit to Grantor a one-year progress report describing the use of the funds and activities undertaken as a result of this grant by December 20, 2000. If all grant funds have not been expended in this period, a final report must be submitted after all funds are expended;

3. If the purpose of this grant is specified, Grantee shall show receipt of these grant funds separately on its books and all expenditures made in furtherance of the purposes of the grant shall appear on those books. Grantee shall make such books and records available to the Grantor at reasonable times. Grantee shall keep copies of all books and records and all reports to Grantor for at

least four years after completion of the use of the funds.

4. Grantee shall not use any portion of the funds granted herein to influence any campaign for public office, nor to make grants to individuals on a non-objective basis, nor to use the funds for any non-charitable or non-educational purpose.

IN WITNESS WHEREOF, this Grant Agreement is signed.

On 12/20/00
For Jobs With Justice
(Organization)

By. /s/
(Signature of Officer)

Fred Azcarate, Executive Director
(Print Name and Title)

Solidago Foundation, Inc.
25 Main Street
Suite 439
Northampton, MA 01060
Telephone: 413-587-0174 Fax: 413-587-0175

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case No. 02-CV-377-GLT-(ANX)

THE CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*,

Plaintiffs,

v.

BILL LOCKYER, *et al.*,

Defendants,

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS and CALIFORNIA LABOR FEDERATION, AFL-CIO,

Intervenors.

DECLARATION OF NICHOLAS ROSS IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

DECLARATION OF NICHOLAS ROSS

Nicholas Ross does hereby declare:

1. I am a certified public accountant and the Partner-in-Charge for the Los Angeles Area Office of Thomas Havey LLP.

2. Thomas Havey LLP is a national CPA firm with approximately 40 partners and 400 staff

members. The Firm specializes in serving the accounting and auditing needs of not-for-profit organizations. About 70 percent of our practice is devoted to these types of organizations. One of the services the Firm provides is assistance to organizations in establishing internal accounting controls and procedures so the organizations can comply with applicable legal requirements.

3. I have worked at Thomas Havey LLP (or the predecessor merged firm Lindquist and Company) since 1985. I have served as engagement partner for the audits of many not-for-profit organizations, and I have been responsible for the planning, supervision and review of these audit engagements. I have a Bachelor of Arts degree and a Master of Business Administration degree from the University of California at Berkeley.

4. I have been informed that under a California Law, which is popularly known as "AB 1889" and is codified at California Government Code sections 16645-49, entities that receive funds from the State of California through grants or contracts, or on account of their participation in state programs, are prohibited from using those, state funds to "assist, promote or deter union organizing."

5. I have also been informed that entities that receive state funds and make expenditures to "assist, promote or deter union organizing" are required by AB 1889 to "maintain records sufficient to show that state funds have not been used for those expenditures," but that nothing in AB 1889 "requires employers to maintain records in any particular form." I have also been informed that AB 1889 prohibits the use of state funds "to reimburse a state

contractor for any costs incurred to assist, promote or deter union organizing." I have been provided with a copy of AB 1889 and have reviewed the statute, including its definitional sections. I have been informed that no regulations have been issued to impose additional requirements for compliance with AB 1889,

6. The accounting and recordkeeping requirements imposed by AB 1889 with regard to state funds are similar to requirements imposed in other contexts, particularly for federal grant recipients. Entities that receive federal grants are generally required to have, among other things: 1) accurate, current and complete financial information for federal awards, 2) effective control over and accountability for all federal assets, 3) controls that assure that assets are used only for authorized purposes, and 4) accounting records that identify the source and use of the federal funds.

7. Requirements with which federal grant recipients generally must comply are set out in the following Circulars issued by the federal Office of Management and Budget (OMB): OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations"; OMB Circular A-122, "Cost Principles for Non-Profit Organizations," and OMB Circular A-133, "Audits of Institutions of States, Local Governments, and Non-Profit Organizations." True and correct copies of these OMB Circulars are attached to this declaration as Exhibits A, B and C.

8. The accounting and recordkeeping requirements imposed by AB 1889 appear to be

significantly less burdensome than the detailed requirements for federal grant recipients set out in the aforementioned OMB Circulars. AB 1889 states that employers need not "maintain records in any particular form," and AB 1889 does not require the filing of periodic reports, so entities that must comply with AB 1889 would have flexibility in establishing proper accounting procedures and controls.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 19 th day of August 2002 at Brea, California.

By: /s/

Nicholas Ross

OFFICE OF MANAGEMENT AND BUDGET

CIRCULAR A-110

(REVISED 11/19/93, As Further Amended 9/30/99)

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

1. **Purpose**. This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations.

2. **Authority**. Circular A-110 is issued under the authority of 31 U.S.C. 503 (the Chief Financial Officers Act), 31 U.S.C. 1111, 41 U.S.C. 405 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and E.O. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

3. **Policy**. Except as provided herein, the standards set forth in this Circular are applicable to all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the statute shall govern.

The provisions of the sections of this Circular shall be applied by Federal agencies to recipients. Recipients shall apply the provisions of this Circular to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient, if such subrecipients are organizations described in paragraph 1.

This Circular does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments," and the Federal agencies' grants management common rule which standardized and codified the administrative requirements Federal agencies impose on State and local grantees. In addition, subawards and contracts to State or local governments are not covered by this Circular. However, this Circular applies to subawards made by State and local governments to organizations covered by this Circular. Federal agencies may apply the provisions of this Circular to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

* * * * *

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in paragraph ___.73(a), including those for property management as applicable, are considered and

provisions made for continuing responsibilities of the recipient, as appropriate.

___.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by (1), (2) or (3).

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Appendix A

Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. Equal Employment Opportunity - All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

* * * * *

6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution

Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.

Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

* * * * *

OFFICE OF MANAGEMENT AND BUDGET

CIRCULAR NO. A-122 Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Cost Principles for Non-Profit Organizations

1. **Purpose**. This Circular establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations. It does not apply to colleges and universities which are covered by Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions"; State, local, and federally-recognized Indian tribal governments which are covered by OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments"; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. **Supersession**. This Circular supersedes cost principles issued by individual agencies for non-profit organizations.

3. **Applicability.**

a. These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a non-profit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a State, local, or federally-recognized Indian tribal government, Circular A-87 shall apply.

* * * * *

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward

adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the non-profit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the non-profit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

ATTACHMENT B
Circular No. A-122
SELECTED ITEMS OF COST

Table of Contents

1. Advertising and public relations costs
2. Alcoholic beverages
3. Bad debts
4. Bid and proposal costs (reserved)
5. Bonding costs
6. Communication costs
7. Compensation for personal services
8. Contingency provisions
9. Contributions
10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
11. Depreciation and use allowances
12. Donations
13. Employee morale, health, and welfare costs and credits
14. Entertainment costs
15. Equipment and other capital expenditures
16. Fines and penalties
17. Fringe benefits
18. Goods or services for personal use
19. Housing and personal living expenses
20. Idle facilities and idle capacity
21. Independent research and development (reserved)
22. Insurance and indemnification
23. Interest, fund raising, and investment management costs

24. Labor relations costs
25. Lobbying
26. Losses on other awards
27. Maintenance and repair costs
28. Materials and supplies
29. Meetings and conferences
30. Memberships, subscriptions, and professional activity costs
31. Organization costs
32. Overtime, extra-pay shift, and multi-shift premiums
33. Page charges in professional journals
34. Participant support costs
35. Patent costs
36. Pension plans
37. Plant security costs
38. Pre-award costs
39. Professional service costs
40. Profits and losses on disposition of depreciable property or other capital assets
41. Publication and printing costs
42. Rearrangement and alteration costs
43. Reconversion costs
44. Recruiting costs
45. Relocation costs
46. Rental costs
47. Royalties and other costs for use of patents and copyrights
48. Selling and marketing
49. Severance pay
50. Specialized service facilities
51. Taxes
52. Termination costs
53. Training and education costs
54. Transportation costs

55. Travel costs
56. Trustees

ATTACHMENT B
Circular No. A-122
SELECTED ITEMS OF COST

Paragraphs 1 through 56 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

* * * * *

d. Fundraising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in **subparagraph B.3 of Attachment A.**

24. **Labor relations costs**. Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

25. **Lobbying**.

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

* * * * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case No. SAC V02377GLT(ANx)

The Chamber of Commerce of the United States, California Chamber of Commerce Employers Group, California Healthcare Association, California Manufacturers and Technology Association, California Association of Health Facilities, California Association of Homes & Services for the Aging, Bettec Corporation, Marksherm Corporation, Zilaco, Inc., Zilaco Del Rio Healthcare Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor -- Costa Mesa, Internext Group,

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and DOES 1 through 10,

Defendants.

DECLARATION OF DARRYL NIXON

I, Darryl Nixon, declare and state as follows:

1. I am the Director of Reimbursement for the California Association of Health Facilities ("CAHF"), a non-profit association representing long-term care providers in California. I have personal knowledge of the facts recited herein, and if called to testify concerning them under oath, I could and would competently testify thereto.

2. I received a B.A. in Business Administration with a concentration in Accounting from California State University, Fullerton in January 1973.

3. Prior to my employment with CAHF, I spent twenty-five years working for the State of California, in various positions.

4. In 1976, I began working at the Department of Health Services for the State of California ("DHS"). I spent over twenty-two years with the DHS in a variety of positions, including Health Program Auditor, Audit Supervisor, Audit Manager, Medi-Cal Field Office Administrator and Branch Chief positions in the Medi-Cal Operations and Medi-Cal Policy Divisions.

5. Based on my education and experience, I am knowledgeable about the audit, financial, and program policy aspects of the Medi-Cal Program and the laws, rules, and regulations governing the Medi-Cal Program and am fully qualified to make this declaration.

6. As Director of Reimbursement for CAHF, my duties include tracking and monitoring all State Plans and State Plan Amendments ("SPAs")

submitted by the State pursuant to its participation in the Medicaid Program and tracking and analyzing provider costs and Medicare and Medi-Cal patient days.

7. CAHF is an association representing an extremely diverse membership, including approximately 1,600 licensed skilled nursing facilities ("SNFs"), intermediate care facilities ("ICFs"), intermediate care facilities for the developmentally disabled ("ICF/DDs"), intermediate care facilities for the developmentally disabled/habilitative ("ICF/DD-Hs"), intermediate care facilities for the developmentally disabled/nursing ("ICF/DD-Ns"), and intermediate care facilities for the developmentally disabled/continuous nursing ("ICF/DD-CNs"). While CAHF represents member organizations that are organized as both "for profit" and "not for profit" entities, the majority of its membership operates long-term care facilities organized as "for profit" entities. CAHF members employ approximately 72,000 employees. CAHF's membership is extremely diverse in terms of size, location case mix, patient type, and licensure status.

8. Also as part of my job as Reimbursement Director for CAHF, I coordinate the processing by CAHF of data for long-term care facilities from the Office of Statewide Health Planning and Development ("OSHPD") and DHS. OSHPD compiles and stores financial and utilization data for all long-term care facilities with the exception of ICF/DD-Hs and ICF/DD-Ns. DHS receives similar data for ICF/DD-Hs and ICF/DD-Ns and provides this data to CAHF, who processes the

data and retains a database containing this information. From the OSHPD and DHS data, CAHF performs "rate runs" which provide detailed information regarding the Medi-Cal reimbursement to health care providers. By analyzing this data, CAHF can determine such reimbursement information as the percentage of Medi-Cal patient days at particular long-term care facilities in California.

9. Attached hereto as Exhibit A is a true and correct copy of a query summary from the OSHPD data concerning the reimbursement of SNFs in California. As the chart demonstrates, the dependence of free-standing SNFs on the Medi-Cal program varies significantly. For example, approximately 20% of free-standing SNFs are dependent on the Medi-Cal program for 89% or more of their reimbursement. Moreover, CAHF represents 60 SNFs which are 90% or more dependent on the Medi-Cal program.

10. Attached hereto as Exhibit B is a true and correct copy of a query summary from the DHS data concerning the reimbursement of ICF/DD-Hs and ICF/DD-Ns. As the chart demonstrates, ICF/DD-Hs and ICF/DD-Ns are heavily dependent on the Medi-Cal program. According to the DHS data, approximately 94% of ICF/DD-Ns and ICF/DD-Hs are 99-100% dependent on the Medi-Cal program. In other words, 94% of ICF/DD-Ns and ICF/DD-Hs have no other resources than funds received through the Medi-Cal program. Moreover, CAHF represents 505 (which is nearly 33% of CAHF members) ICF/DD-Hs and ICF/DD-Ns which are 100% dependent on the Medi-Cal program.

11. Attached hereto as Exhibit C is a true and correct copy of a query summary from the OSHPD data concerning the reimbursement of Bay Crest Care Center, Brier Oak Terrace Care Center, and Royalwood Care Center. As the chart demonstrates, these three facilities have drastically different percentages of Medi-Cal patient days than the ICF/DD-Ns and ICF/DD-Hs referenced in paragraph 10 and than the 20% of free-standing SNFs referenced in paragraph 9. The percentage of dependence on the Medi-Cal program for these three facilities during 1999 through 2001 ranged from 48.7% to 78.9%.

12. I have reviewed the declarations submitted by the State in its moving papers regarding the submission of a SPA. I am not aware of any public notice provided during the filing and ultimate approval of this SPA. -

I declare under penalty of perjury under the laws of the United States and that the foregoing is true and correct. -

EXECUTED on this 16th day of August, 2002, at Sacramento County, California.

/s/

Darryl Nixon

NATIONAL LABOR RELATIONS BOARD
Office of the General Counsel
Washington, D.C. 20570

For Immediate Release

Monday, November 19, 1999

NLRB General Counsel Fred Feinstein Issues Report on Organizational and Casehandling Developments and Recurring Legal Themes During His Tenure Since March 1994

* * * * *

In a supplemental post-argument brief, I took the further position that a finding of joint employer status for the purpose of imposing a bargaining obligation should not require the consent of all of the joint employers. Instead I urged the Board to simply apply a traditional "community of interest" analysis and to find an appropriate unit whenever such community exists and any one of the joint employers exercises sufficient control over all employees that the enterprise cannot be said to consist of "competing" employers. The Board has not yet ruled on these cases.

"Neutrality" Agreements

Partly in response to some of these trends, unions have begun to make greater efforts to obtain "neutrality agreements" during organizing campaigns or in collective-bargaining agreements. Such agreements include not only traditional "*Kroger* clauses"-requiring recognition and applying the contract at newly-acquired or opened facilities based

on a showing of majority support-but also other agreements designed to facilitate success in organizing. For example, unions have begun to seek employer waivers of their Lechmere rights to deny, consistent with state law, access to their property to union organizers; as well as employer agreements to provide names and addresses of employees at the start of an organizing campaign, and to refrain from exercising their §8(c) right to express their views about unionization.

The issues raised by these kinds of union proposals are ones of first impression, as there is no Board decision expressly approving or condemning them. One of the most important questions is whether such provisions are mandatory or permissive subjects of bargaining-that is, can unions insist to impasse or even take economic action to obtain them?

In one case, *Sahara Hotel*, I issued a complaint alleging that the union unlawfully insisted to impasse on an access clause, an employer no-speech provision, and a provision requiring disclosure of employee names and addresses on the ground that they were permissive subjects of bargaining. That is, those provisions would settle no terms and conditions of employment of unit employees but would merely further the union's own institutional interests by facilitating the organizing of unorganized employees. However, I also instructed the Regional Office to argue that two of those provisions, the access and roster provisions, should be considered mandatory subjects, upon which the union lawfully could insist, because they were merely mechanisms for implementing the parties' "after-acquired" Kroger

clause, which is well settled to be a mandatory subject of bargaining. That is, since the union may lawfully insist to impasse on a Kroger clause, it should be able to insist to impasse on the procedures to be used—e.g., providing names and/or access-to facilitate its implementation. The case never reached the Board because the parties settled their dispute. But, as neutrality proposals become more prevalent, the Board wilt ultimately need to address these issues. A detailed treatment of this case can be found in my Case Handling Report dated November 20, 1996 (http://www.nlrb.gov/press/r2l84.html)

Other Issues

A number of other issues that have come before me have had their origins in recent changes in the relationship between employers and employees. These include the circumstances under which an employer can withdraw recognition from an incumbent union; the status of graduate teaching assistants; efforts by employers to condition employment or benefits on employees' agreement to submit certain workplace disputes to arbitration and other forms of ADR.

* * * * *

Assembly Committee On Labor and Employment
Darrell Steinberg, Chairman

BACKGROUND INFORMATION

Measure: AB 1889

Author: Assembly Member Cedillo

1. Origin of the bill

   a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
   California Labor Federation, AFL-CIO

   b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.
   Yes, AB 442 (Cedillo) 1999-2000 Regular Session

   c. Has there been an interim committee report on the bill? If so, please identify the report.
   No

2. What is the problem or deficiency in the present law which this bill seeks to remedy?
   Nothing in existing law prohibits recipients of state funds from using the funds to encourage or discourage unionization.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.
See attached.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.
The sponsors will propose amendments to the author at a meeting on April 5, 2000. They should only be technical in nature.

6. List the witnesses you plan to have testify.

Tom Rankin, California Federation of Labor, AFL-CIO
Alan Davenport, Service Employees International Union
Barry Broad, International Brotherhood of Teamsters

RETURN THIS FORM TO: Assembly Committee On Labor and Employment, Phone (916) 319-2091 – Brenda K. Heizer – LOB, Room 155

STAFF PERSON TO CONTACT: Dan Savage 319-2046

California Association of Nonprofits
215 West 9th Street
Los Angeles, CA 90015

April 27, 2000

The Honorable Gil Cedillo
California State Assembly
State Capitol
Sacramento, CA 95814

Re: AB 1889 (Cedillo) State funds: unionization

Status: Assembly Appropriations Committee

Dear Assemblyman Cedillo:

The CAN Nonprofit Policy Council (NPC) is the public policy project of the California Association of Nonprofits (CAN). The California Association of Nonprofits is committed to maintaining the strength and diversity of the states nonprofit sector. The California Association of Nonprofits' 1800 members represent the spectrum of nonprofits - from health care to child care, social justice, legal aid and the religious sector.

This bill would impose an unreasonable burden on nonprofits to avoid a potential violation of the bill. Nonprofits that receive contracts and/or grants from the state of California are not allowed to use those funds for anything other than the stated purpose of the contract and/or grant. Nonprofits receiving state funding are carefully monitored to make sure they do not use funds for not allowed purposes.

This bill would also impose an unreasonable burden on nonprofits in that they would have to maintain duplicate minutely detailed records to track funds received from the state. They are already required to do that by the governmental agency from monitoring the contract. It would be expensive and unreasonable to ask them to keep additional records to prove they were not engaging in an activity for which they cannot use the funds in the first place.

AB 1889 also has the potential to significantly increase litigation costs by providing countless opportunities for unhappy employees to file civil actions merely in an effort to harass employers. Nonprofit organizations have minimal income to begin with. To add the possibility of litigation, particularly when it would be for an activity they cannot engage in the first place, seems unreasonable and could threaten the very existence of individual nonprofit organizations.

* * * * *

California Labor Federation

April 6, 2000

Assemblyman Darrell Steinberg
Chair, Assembly Labor and Employment Committee
State Capital, Room 2176
Sacramento, CA 95814

RE: AB 1889 (Cedillo) – SUPPORT

Dear Assemblyman Steinberg:

The California Labor Federation, AFL-CIO, supports AB 1889 (Cedillo), which would require state neutrality in union representation campaigns by prohibiting the use of state funds and facilities to assist, promote or deter union organizing.

Currently recipients of state funds, including those who receive reimbursements or grants and those who engage in service contracts, are permitted to use those state funds to assist, promote or deter organizing. We believe that use of state funds in this manner is a misuse of taxpayer funds.

Numerous federal statutes prohibit federal funds from being used to influence employees' choices regarding union representation. For example, the Job Training Partnership Act, the Workforce Investment Act, the National Community Service Act and the Head Start Programs Act all provide that funds or assistance shall not be used to "assist, promote or deter union organizing". Proposed regulations implementing the Federal Acquisition

Act also would prohibit taxpayer monies from influencing an employee's decision whether to choose representation.

AB 1889 would ensure that the power and resources of the state will not be used to deprive employees their right to choose or not choose a union. The bill will benefit the state in two principal ways. First, AB 1889 would ensure that state funds are not wasted on expensive worker campaigns and that employers who wish to wage a pro-union or anti-union campaign would have to use their own monies to do so. Second, it would save the state the loss of productivity on state funded projects that result from the work interruptions and labor conflicts often associated with anti-union campaigns.

We urge you to vote "YES" on AB 1889 when it comes before you in the Assembly Labor and Employment Committee on Wednesday, April 12, 2000.

Sincerely,

/s/

Tom Rankin
President

Cc: Committee Members
Assemblyman Gil Cedillo

Organizing Experiences Under Union-Management Neutrality and Card Check Agreements

Report to the Institute for the Study of Labor Organizations, George Meany Center for Labor Studies

February 1999

Adrienne E. Eaton
Labor Studies & Employment Relations Dept.
Labor Education Center
Rutgers University
50 Labor Center Way
New Brunswick, NJ 08901-8553

Jill Kriesky
Institute for Labor Studies and Research
West Virginia University
710 Knapp Hall
Morgantown, WV 26506

Executive Summary

This study summarizes the results of a study of approximately 114 neutrality and card check agreements. The main findings in each area are listed below

Coverage of Agreements. The typical neutrality/card check agreement is negotiated between a single union and a major employer in a national or regional agreement and contains limitations on the types of workers covered.

- Over half of the agreements studied were negotiated in centralized, company-wide national negotiations.

- A small number of these agreements are with multiple employers.

- Two-thirds of the agreements contain exclusions of significant numbers of unorganized workers, based on occupations, facilities and businesses or both.

- Most agreements have only one union signatory. Language varies as to whether or not organizing by additional unions is covered.

Negotiation of Agreements. Neutrality and card check agreements are a relatively new phenomenon, negotiated both within and outside of contracts using sources of leverage ranging from union-management collaboration to high-profile public campaigns against employers.

- Although a few agreements are roughly 20 years old, more than 3/4 were negotiated in the 1990s.

- The sources of leverage used to obtain these agreements are complex and difficult to disentangle. Thirty two of the agreements have been bargained in the context of a formal labor-management partnership. Another common source of leverage was through the public sector, making use of political ties and/or government regulations to pressure the employer.

- The majority of the agreements were found in side

letters, memoranda or appendices to the contract. Close 1020% existed outside of any existing bargaining agreement or relationship at all.

- The initial language negotiated is rarely ideal from the union's perspective. Most of the agreements have not been renegotiated. Of those that have been, the majority have been improved from the union's standpoint.

Language. Although wide variation exists in the definition of neutrality and methods used to enforce the language, most agreements specify the use of the card check to determine union status.

- Almost 3/4 of the agreements call for card check. The card check is typically triggered by a simple majority although some agreements require as much as 65% of the unit to have signed cards.

- The definition of neutrality varies quite widely from very general statements to very specific fists of tactics prohibited.

- Roughly 40% of agreements require the employer to send the union a fist of employees.

- 2/3 of agreements give the union physical access to the employer's property for purposes of organizing.

- More than 3/4 of agreements set limits on union behaviors in organizing, including prohibitions of verbal attacks on management, time limits on and advance notice of organizing drives.

- Some form of dispute resolution is called for in

over 90% of the agreements. Almost all card check agreements require the card check to be conducted by a neutral third party. For other types of disputes, including compliance with neutrality, approximately 85% had some form of dispute resolution. A little over 10% called for a joint labor-management panel as the final step for this type of dispute.

- Language that addresses the bargaining process that is to follow successful organizing exists but is relatively rare. About 1/3 of agreements mention accretion. Arbitration of first agreements is called for in only a few cases, all of which involve a single international union.

- A cutting edge area of language is the company's commitment to pressure suppliers or other firms with which it has a relationship to also implement neutrality or card check.

Organizing Experience. Neutrality/card check agreements have, indeed, produced significant organizing successes.

- Almost 90% of the unions have tested the language they have negotiated by initiating an organizing drive.

- 255 separate campaigns were identified resulting from 92 of the 113 agreements. 180 of these resulted in recognition by the employer.

- The overall success rate was 70.6%. The average success rate across individual agreements was 72.8%.

- First contracts followed recognition in almost all cases.

Management Violations. Neutrality/card check agreements have not wiped out management's use of anti-union campaign tactics.

- Unions alleged management violations of the agreements about 60% of the time.

- Legal and illegal anti-union campaign tactics (discharge of union supporter, hiring a consultant, captive audience meetings, supervisor one-on-one campaigns, promises of wage increases or other improvements) were used but at a much lower rate than is common in the private sector.

- Some violations were specific to the provisions of the neutrality agreement: Some employers denied coverage of particular groups of workers while others failed to turn over accurate or timely lists to the union.

- Many of the violations are committed by local managers who corporate-level managers are unable or unwilling to control.

Union Tactics. Unions organizing under neutrality/card check agreements have altered their campaign methods in various ways, but they violate the agreements far less frequently than management.

- Management alleged union violations of the agreement relatively rarely (12.5% of cases) but the allegations often triggered management antiunion campaigns.

- Almost 3/4 of the individual union respondents reported that the agreement had affected union organizing tactics, but the nature of the impact varied widely. Many unions avoid attacking the employer and emphasize instead a positive message about the union.

Explaining Success. Statistical analysis of successful campaigns offers several insights into the specific neutrality conditions which can help improve the union "win rate" in organizing.

- Success is defined by the percentage of organizing drives ending in recognition.

- Higher success rates are associated with

    - card check but not neutrality alone

    - union access to fists of workers

    - some form of dispute resolution

    - no management violations (success rates approach 100% in the absence of management violation)

    - no alleged union violations

    - simpler (single unit) bargaining structures or agreement coverage

    - the initial leveraging of the agreement through political ties and/or government regulatory processes

Questions for the Future. This study is the first comprehensive look at neutrality and card check agreements; additional research will enhance our understanding of their effectiveness, in particular we need to know more about:

- How to develop effective mechanisms to prevent local managers from violating agreements within corporate-wide, multi-site agreements.

- How to develop better, more effective remedies for management violations

Introduction

A long stream of industrial relations research has identified employer opposition as a key variable in explaining both union losses in certification elections and, ultimately, in the overall decline of unionization in the U.S. (Dickens 1983, Freeman and Medoff 1984, Lawler and West 1985, Bronfenbrenner 1994). A major tactic used in recent years by unions to counter employer opposition to union organizing is the negotiation of agreements with management to remain neutral in certification elections, to conduct expedited elections, or to recognize the union based solely on the presentation of sufficient number of signed membership cards. As hope for reform of the National Labor Relations Act has faded, union attention has shifted to the neutrality agreement approach. Further, many unions have come to view such agreements as essential elements or quid pro quo's of broader union-management partnerships. In this context, the neutrality pledge strengthens the union's ability to organize and demonstrates

management recognition of the legitimacy of union institutional goals and organizational viability parallel to that which unions show for employers' to restructure to business practices.

While there appears to be a growing focus within the labor movement on neutrality and card check (N/CC) agreements, little is actually known about them. This study summarizes the results of a study of approximately 114 such agreements. The information obtained about these agreements includes their bargaining history, coverage, substantive content and issues related to organizing experience such as the number of organizing campaigns conducted, the tactics used by both union and management, and success rates. Significant findings in each of these areas, outlined in more detail throughout this study, suggest that the heightened interest in this strategy is not misplaced. Several major unions have used a wide range of tactics to secure N/CC language which, in turn, has produced both organizing victories and successful negotiation of first contracts. However, there are clearly provisions, especially regarding card check recognition and prohibition of specific management tactics, make some agreements more successful for unions.

In the following sections of this paper, we briefly describe our research methods and then present our results. We first examine the negotiation of the agreements, including coverage of the agreement and the date and process of the negotiations. We then look at the specific types of language that were bargained. We next turn to the organizing experience under the agreements,

including success rates, management violations and impact on union tactics. Finally, we use our data to offer explanations for the successes generated by the agreements.

Research Methods

The first stage of this multi-year project involved surveying union staff or officers of international unions with 100,000 or more members primarily in the private sector to identify current or recent N/CC agreements negotiated with employers. Completed early in 1997, this effort identified over 50 such agreements negotiated by at least 13 separate unions (Eaton and Kriesky 1997). It should be noted that we were fairly specific in the types of agreements we sought to identify. One question asked for any 'neutrality or non-interference agreements (an agreement in which the employer agrees to remain neutral regarding union organizing conduct)." A second question asked for other agreements "regarding organizing unorganized workers such as card check arrangements, unit accretion, physical access, etc.", Although we did ask about accretion agreements, very few respondents listed any and so we chose not to pursue that type of agreement in any detail. As the study progressed, we also ruled out agreements that were not in writing. Finally, the sample includes agreements that are currently in effect as well as some that have recently (within a few years of the research beginning) expired.

The intent of the second phase was to examine the negotiation, content and utility of these

agreements in some detail. In the course of collecting data for this phase of the project, we identified a significant additional number of agreements, totaling to 131. These 131 agreements are distributed unevenly across 21 unions (19 if we include two recent Steelworkers affiliates within that Union). Four unions reported over 10 agreements (two of those had over 20). Ten unions had only one or two. Figure 1 shows the sectoral distribution of these 131 agreements (see also Table 1). Figure 2 shows the sub-sectoral distribution within the service sector (see also Table I a).

* * * * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF California
SOUTHERN DIVISION
Case No. 02-C V-377-GLT (ANX)

THE CHAMBER OF COMMERCE OF THE UNITED STATES, *et al.*,

Plaintiffs,

v.

BILL LOCKYER, *et al.*,

Defendants,

and

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS and CALIFORNIA LABOR FEDERATION, AFL-CIO,

Intervenors.

INTERVENORS' REPLY MEMORANDUM IN SUPPORT OF INTERVENORS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

* * * * *

E. AB 1889 Is Not Preempted by the Medicare Act, the Medicaid Act or the State Medicaid Plan.

1. In their motion for summary judgment, plaintiffs argued that the Medicare and Medicaid Acts preempted AB 1889 because Congress occupied the field of provider cost reporting and reimbursement. As we previously explained, this argument conflates the distinction between the Medicare and Medicaid Acts. The Medicare Act, which creates a federally funded health insurance program in which no state funds are involved, has no bearing on AB 1889, which regulates the use only of state funds. And Congress, through the Medicaid Act, in no way intended to displace state regulation of Medicaid provider reimbursement. The structure and legislative history of the Medicaid Act demonstrate that Congress intended the states to have broad latitude to design and administer their Medicaid programs in general and their Medicaid reimbursement systems in particular. *See* Intervenors' Cross-Mot. S.J. at 14:5-15:13; Intervenors' Opp. Pls. Mot. S.J. at 19:25-23:4.

In their opposition to our cross-motion for summary judgment, plaintiffs now contend that AB 1889 is also preempted because it conflicts with California's state Medicaid plan. Plaintiffs argue that while AB 1889 bars expenditures for certain activities, the state plan — prior to a recent amendment — allowed these same expenditures to be included in a Medi-Cal provider's cost report, and that this "conflict" results in the preemption of AB

1889. *See* Pls. Opp. Cross-Mot. S.J. at 27:23-30:6. Plaintiffs' argument papers over the critical distinction between the activities controlled by California's state Medicaid plan and those governed by AB 1889, While the former sets forth how Medicaid providers report costs for the state's prospective rate-setting purposes, the latter regulates how Medicaid providers spend state Medicaid funds. Given this distinction, plaintiffs' alleged "conflict" is illusory.

As set forth in our cross-motion for summary judgment, California requires Medi-Cal providers to submit cost reports; the state then sets prospective Medi-Cal reimbursement rates on the basis of cost reports submitted by providers statewide. *See* Intervenors' Cross-Mot. S.J. at 16:7-16. Accordingly, the state does not directly reimburse a Medi-Cal provider for the expenditures it individually incurs and reports.

California has amended the state plan to prohibit Medi-Cal providers from reporting expenditures that assist, promote, or deter union organizing where such expenditures were paid with state funds. *See* Morrow Dee Supp. Defs. Cross-Mot. S.J. ¶ 3, Ex. A at 3 (discussing Amendment #02-006). Plaintiffs object to Amendment #02-006 on procedural grounds. But regardless of the Amendment's validity, the reporting requirements of the state plan merely specify — as their name would suggest — which expenditures a Medi-Cal provider may include in the cost report it submits to the state. With respect to the question whether a Medi-Cal provider may spend state funds to assist, promote, or deter union organizing, the state plan itself (both

before and after the adoption of Amendment #02-006) says nothing at all.

Instead, the provision of state law that regulates whether a Medi-Cal provider may spend state funds to assist, promote, or deter union organizing is AB 1889. And that statute — unlike the state plan — does not regulate Medi-Cal cost reporting.[2] Rather, it requires that providers who opt to participate in state programs such as Medi-Cal not *spend* state funds to assist, promote, or deter union organizing. Accordingly, plaintiffs have identified no "conflict" at all between the statute, which regulates expenditures, and the state plan, which regulates reporting.

Moreover, conflict preemption occurs where "where compliance with both federal and state regulations is a *physical impossibility*." *Boggs v. Boggs*, 520 U.S. 833, 844, 117 S.Ct. 1754, 1762 (1997) (emphasis supplied) (internal quotation marks and citation omitted). Even assuming that the state plan (without Amendment #02-006) allowed reporting of costs to assist, promote or deter union organizing, and that a reporting regulation could conflict with an expenditure regulation, the state plan certainly did not require such costs to be reported.

2. In any event, a "conflict" between the state plan and AB 1889 would not result in the statute's preemption. Plaintiffs do not explain how a

---

[2] Cal. Gov. Code § 16645.7, the section of AB 1889 pertinent to Medi-Cal, requires only that private employers receiving state funds in excess of $10,000 "*maintain records* sufficient to show that state funds have not been used for. . . expenditures [to assist, promote, or deter union organizing]." (Emphasis supplied).

conflict between the *state* Medicaid plan and a *state* statute could give rise to *federal* preemption. And clearly, any effort to rely upon the *state* Medicaid plan to invalidate AB 1889 is barred by the Eleventh Amendment. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 106, 104 S.Ct. 900, 911(1984) (Eleventh Amendment bars "[a] federal court's grant of relief against state officials on the basis of state law").

3. In an effort to create a live "conflict" between AB 1889 and the state plan, plaintiffs devote the bulk of their Medicaid argument to attacking the procedural validity of Amendment #02-006 on the ground that no public notice was given. *See* Pls. Opp. Cross-Mot. S.J. at 29:5-30:6. For the reasons set forth above, the "conflict" of which plaintiffs complain would not result in the invalidation of AB 1889, even if Amendment #02-006 had never been adopted or were procedurally invalid. But equally to the point, the procedural validity of Amendment #02-006 is not before the Court in this lawsuit, which is directed at the validity of AB 1889. Plaintiffs seek a declaration that AB 1889 is unenforceable and an injunction against the statute's enforcement, but have sought no relief with respect to Amendment #02-006. *See* Complaint at 27.

Furthermore, plaintiffs have not established that they have a right to enforce, through a private lawsuit, the procedural requirements of 42 U.S.C. § 13 96a(a)(13)(A), the Medicaid Act's reimbursement provision. Congress enacted the current version of § 1396(a)(13)(A) and repealed its predecessor — the Boren Amendment — in part to overrule legislatively the Supreme Court's decision in *Wilder v. Virginia*

Hosp. Assn., 496 U.S. 498, 110 S.Ct. 2510 (1990), which had held that the Boren Amendment created a right of Medicaid providers, enforceable through 42 U.S.C. § 1983, to reasonable and adequate reimbursement rates. *See Evergreen Presbyterian Ministries Inc. v. Hood*, 235 F.3d 908, 919 n.12 (5th Cir. 2000) ("Congress intended [in repealing the Boren Amendment]... to eliminate a basis for causes of action by providers to challenge reimbursement rates"). The House Report on H.R. 2016, which enacted the current version of § 13 96a(a)(1 3)(A), explains:

> Section 3411 repeals the Boren Amendment and establishes a public notice process for setting payment rates.... It is the Committee's intention that, following enactment of this Act, neither this nor any other provision of [42 U.S.C. § 1396a} will be interpreted as establishing a cause of action for hospitals and nursing facilities relative to the adequacy of the rates they receive.

H.R. Rep. No. 105-149, at 591 (1997).

In light of Congress' expressed intent to *eliminate* a cause of action for providers to challenge the reimbursement provisions of a state's Medicaid plan, there is simply no basis for concluding that Congress intended Medicaid providers to have the right to enforce the current version of §1396a(a)(13)(A) through a private lawsuit. *See Doe v. Gonzaga*, __ U.S. ____, 122 S.Ct. 2268, 2277 (2002) (where there is "no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under [42 U.S.C.] §1983 or under an implied right of action"); *Florida Assn. of*

Rehabilitation Facilities, Inc. v. Fla. Dept. of Health and Rehabilitative Servs,, 225 F.3d 1208, 1217 n.6 (11th Cir. 2000) ("A review of the legislative history makes clear that Congress [in repealing the Boren Amendment] was indeed concerned with the cost of health care provider suits against states and sought to curb the proliferation of such suits.").

Any violations of § 1396a(a)(13)(A) must instead be addressed by the Secretary of Health and Human Services. See Doe, 122 S.Ct. at 2279 (nondisclosure provisions of Federal Educational Rights and Privacy Act not privately enforceable and instead "serve primarily to direct the Secretary of Education's distribution of public funds to educational institutions").[3]

---

[3] Even under the Boren Amendment, the Ninth Circuit held: "Our duty is not to determine for ourselves whether the State's notice sufficiently complied with the statute and regulations; that duty is imposed upon the Secretary." *Independent Acceptance Co. v. California*, 204 F.3d 1247, 1251-52 (9th Cir. 2000) (concluding that Secretary did not act arbitrarily or capriciously in accepting State's assurance that requisite notice was given). Plaintiffs have not established that the federal government acted arbitrarily or capriciously in approving Amendment #02-006. The record establishes that "[t]he State has in place a public process which complies with the requirements of [42 U.S.C. § 1396J(a)(13)(A) of the Social Security Act." Hardiman Decl. Supp. Defs. Cross-Mot. S.J., Ex. B at 67 & Ex. C at 95. The record also indicates that Amendment #02-006 was not the type of amendment that required public notice. Section 1396a(a)(13)(A)(i) requires public notice of "proposed rates, methodologies underlying the establishment of such rates, and justifications for the proposed rates." As the State's request to the federal government for approval of Amendment #02-006 explains, however, the proposed "changes *do not affect the rate setting methodology*, but clarify what may be included as allowable costs." Morrow

4. Plaintiffs assert that there was a "19 month period," prior to the adoption of the Amendment, during which AB 1889 and the state plan were in "direct conflict." Pls. Opp. Cross-Mot. S.J. at 30 n. 22. But even if there were such a "conflict" (and there was not), it is now moot, for it arose prior to and was eliminated by the state's adoption of Amendment #02-006, the validity of which plaintiffs are not free to attack in this proceeding. Plaintiffs seek only declaratory and injunctive relief. Complaint at 27. The "19 month period" — now past — during which they assert a "conflict" raises no live controversy.

* * * * *

(continued...)

Decl. Supp. Defs. Cross-Mot. S.J., Ex. A at 3 (emphasis supplied). By the terms of § 1 396a(a)(1 3)(A)(i), an amendment that does not alter the state's reimbursement methodology would not require public notice. Accordingly, the Secretary's approval of Amendment #02-006 was not arbitrary or capricious. *See Independent Acceptance Co.*, 204 F.3d at 1252 ("Secretary ha[s] discretion to determine whether the State had given sufficient assurance that its notice was in substantial compliance.").

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Case No. SACVO2377GLT(ANx)

The Chamber of Commerce of the United States, *et al.*
Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bonta R.N., Dr., P.H. as the Director of the California Department of Health Services and DOES 1 through 10,
Defendants,

and

American Federation of Labor and Congress of Industrial Organizations and California Labor Federal, AFL-CIO,

Intervenors.

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

* * * * *

VI. PLAINTIFFS HAVE FAILED TO REFUTE STATE DEFENDANTS' SHOWING THAT AB 1889 IS NOT PREEMPTED BY EITHER THE MEDICARE ACT OR THE MEDICAID ACT.

Plaintiffs' opposition papers utterly fail to refute our showing that AB 1889 is not preempted by either the Medicare Act or the Medicaid Act. Rather, plaintiffs' argument is based on a confusion of the issues and a misunderstanding of the law applicable to Medicaid programs.

Plaintiffs begin their groundless argument by stating that AB 1889 prohibits Medi-Cal providers from making expenditures for certain activities, while allowing those activities to be used to determine the amount that providers receive in payment for services provided to Medi-Cal beneficiaries. Plaintiffs' memo., p. 1-4. This argument fails to distinguish between two separate sources of regulation over Medi-Cal providers. While AB 1889 regulates the manner in which Medi-Cal providers may spend state funds, it does not govern which expenditures are used to determine the prospective reimbursement rates ultimately set by the state for different classes of Medi-Cal providers statewide.

The latter is instead governed by the cost reporting requirements of the State Medical Plan, as amended by Amendment 02-006. To be sure, AB 1889 and Amendment 02-006 both contain various requirements with respect to expenditures, paid out of state funds, to assist, promote, or deter union organizing. But AB 1889 mandates only that such expenditures not be *made*, while Amendment 02-006 requires only that such expenditures are not allowable in determining Medi-Cal reimbursement rates for such services.

Plaintiffs' attempt to make much of certain distinctions between the provisions of AB 1889 and portions of the Medicare Provider Reimbursement Manual (PRM). Plaintiffs' argument has no significance or effect with regard to their preemption claim. As demonstrated in State Defendants' moving papers, Medicare is a federal program that does not regulate or govern Medicaid providers in general or the Medical program in particular.

Moreover, both AB 1889 and the PRM carry out the same **general** purpose of excluding reimbursement for employers' expenditures for anti- or pro-unionization activities. AB 1889 and the PRM need not be identical in the manner in which they effect that purpose, and any differences in the details of how they respectively achieve that goal certainly do nothing to support plaintiffs' argument that AB 1889 is preempted. To the extent that AB 1889 does not perfectly mirror every provision of the PRM, such differences are perfectly unassailable, given the well-established leeway accorded the states to tailor their Medicaid reimbursement methods to their own needs and circumstances. *See Evergreen Presbyterian*

Ministries Inc. v. Hood, 235 F.3d 908, 919 n. 12 (5th Cir. 2000) (Congress enacted current version of Medicaid Act's reimbursement provision and repealed predecessor, known as Boren Amendment, "to free the states from federal regulation"); *Indiana Ass 'n of Homes for the Aging Inc. v. Indiana Ofc. of Medicaid Policy and Planning*, 60 F.3d 262, 266 (7th. Cir. 1995) (Boren Amendment gave states "broad discretion . . . to establish payment and reimbursement systems"). Clearly, the federal approval of State Plan Amendment 02-006 (assuming, as plaintiffs do, that the amendment contains the substantive content of AB 1889) evinces the federal government's assertion that AB 1889 comports with, and is not preempted by, federal law. *See New York State Dept. of Soc. Servs. v. Dublino*, 413 U.S. at 418, 420-21 (New York's requirements that welfare recipients work, in order to receive benefits from "cooperative federalism" public assistance program, not preempted where, inter alia, responsible federal agency approved New York's incorporation of work requirements into its public assistance plan); *Indiana Assn.*, 60 F.3d at 270 (according HCFA's approval of Indiana's state plan "considerable weight").

Plaintiffs contend that the submission of the amendment "is itself an explicit concession that a conflict existed" between federal law and AB 1889. That contention has no basis in either law or fact. While plaintiffs argue that "If there was no conflict, there would be no need to the State to submit a SPA," (Plaintiffs' memo., 28:26-27), it is exactly the converse that is true: If there were a conflict between AB 1889 and the PRM, the Medicare Act or the Medicaid Act, the federal government would not have approved the amendment.

Plaintiffs' argument further reveals their misapprehension of Medicaid law. They assume that the State Plan Amendment was submitted in order to correct conflicts between the Medicaid state plan and federal law (Plaintiffs' memo., 28:26-27), and that even assuming the state plan is now consistent with federal law, the two must have been inconsistent prior to the approval of the amendment. In fact, as set forth in our moving papers, the states are permitted considerable discretion and leeway to design their state plans, including their reimbursement schemes, in order to accommodate their own needs. Plan amendments are commonly utilized to modify state plans in order to better meet changing needs and to make improvements to the system, and the approval of an amendment hardly means that what existed in the plan prior to the amendment was invalid.

Furthermore, even though the amendment has been approved by the federal government agency responsible for administering the Medicaid and Medicare programs, plaintiffs inexplicably argue that it is invalid because public notice of the amendment was not given. That argument yet again reveals plaintiffs' misunderstanding of Medicaid requirements. The state must give public notice of any significant proposed changes to the methods and standards for setting reimbursement payment rates. 42 C.F.R. section 447.205(a). AB 1889 clearly does not establish, alter, or in any way prescribe Medi-Cal reimbursement rates.[4]

---

[4] It is worth noting that, in addition to lacking legal merit, plaintiffs' notice argument also lacks a factual basis. Plaintiffs begin by inverting the burden of proof, asserting that the State

The final offering from plaintiffs, in response to State Defendants' showing that there is no Medicare or Medicaid preemption, is particularly weak. In footnote 22 of their memorandum, plaintiffs argue that AB 1889 was ineffective for 19 months prior to its effective date, because during that time the statute was in conflict with the Stats Plan and the "Medicaid Program," and the amendment had not as yet cured that conflict. Plaintiffs' memo., p. 30, fn. 22. To begin with, plaintiffs have not shown, and cannot show, any preemption of AB 1889 by the Medicare or Medicaid Acts.

But even assuming that there were some merit in plaintiffs' claim of a conflict, it is now moot. Plaintiffs' suit seeks declaratory relief and

---

(continued...)

Defendants must present evidence that public notice was given. Plaintiffs' memo., 29:14. Of course, the State Defendants have no such burden. Plaintiffs then present and rely upon the declaration of Mark Reagan, which purportedly supplies the factual foundation for their public notice argument. In fact, the Reagan declaration does not at all support the characterization given it in plaintiffs' opposition memorandum. In their memorandum, plaintiffs claim that Mr. Reagan "requested information from DHS whether it intended to submit a SPA with regard to AB 1889." Plaintiffs' memo., 29:17-19. In fact, in his letter Mr. Reagan offered a legal argument that there were "inconsistencies between the requirements of AB 1889 and HIM-15,"stated that he "presume(d) that the Department would possibly decide to amend the State Plan to resolve (such) inconsistencies," and stated that he would "appreciate learning the Department's ultimate determination on this issue." Decl. of Reagan, Ex. A, p.3. Mr. Reagan's legal argument and presumption based on it were both wrong, and the Department need not have agreed with them or made any determination based on it.

prospective injunctive relief.

It does not, and, under the Eleventh Amendment cannot, seek retrospective damages or other retrospective relief.

* * * * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

CASE No. SA CV02377 GLT (ANx)

The Chamber of Commerce of the United States, California Chamber of Commerce Employers Group, California Healthcare Association, California Manufacturers and Technology Association, California Association of Health Facilities, California Association of Homes & Services for the Aging, Bettec Corporation, Marksherm Corporation, Zilaco, Inc., Zilaco Del Rio Healthcare Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor — Costa Mesa, Internext Group,

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bontá, R.N., Dr., P.H. as the Director of the California Department of Health Services and DOES 1 through 10,

Defendants.

[PROPOSED] STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

I. UNCONTROVERTED FACTS

After consideration of the papers, evidence and argument properly submitted by the parties in support of and in opposition to Plaintiffs' Motion for Summary Judgment, the Court hereby finds the following facts are uncontroverted. To the extent any such uncontroverted facts are deemed to be conclusions of law, they should be understood as incorporated in Section II below as though fully set forth therein.

1. On September 28, 2000 Governor Davis signed AB 1889 into law, making it effective January 1, 2001. (North Decl. Exh. 1.)

2. On March 1, 2002, the Department of Health Services ("DHS") Audit Division began sending out a letter dated February 28, 2002 requiring that skilled nursing facilities and intermediate care facilities return the enclosed certification, certifying that they will comply with California Government Code Section 16645.7 of AB 1889, or forfeit their right to participate in, and receive funds from, the Medi-Cal program. (Armentrout Decl., Exh. 1.)

3. Recipients of the February 28, 2002 letter were given forty-five days from the letter's

date, or until April 15, 2002 to respond. (Armentrout Decl., Exh. 1.)

4. Plaintiffs Zilaco, Inc., Zilaco, Del Rio Healthcare Inc., Beverly Health & Rehabilitation Services, Inc. dba Beverly Manor — Costa Mesa, and Internext Group and members of Association Plaintiffs received the February 28, 2002 letter from the DHS. (Highland Decl. ¶5; Swales Decl. ¶5; Zilafro Decl. ¶ 5; Wheeler Decl. ¶ 5; Armentrout Decl. ¶ 10; Johnson Decl. ¶ 9.)

5. Members of Plaintiffs CAHF and CAHSA did not sign and return the certification as required in the March 1 and March 15, 2002 letters. (Armentrout Decl. ¶12; Johnson Decl. ¶ 11.)

6. On April 26, 2002, the DHS sent out a second letter to recipients of the February 28, 2002 letter who did not sign the certification. This letter required recipients to sign and return the certification, certifying that they will comply with California Government Code Section 16645.7. The recipients were required to return the certification to the DHS within 15 days of the date of the letter. (Armentrout Decl., Exh. 3.)

7. On March 15, 2002, the DHS subsequently sent letters to intermediate care for the developmentally disabled facilities participating in the Medi-Cal program requiring that they return the enclosed certification, certifying they will comply with California Government Code Section 16645.7, or forfeit their right to participate in, and receive funds from, the Medi-Cal program. (Armentrout Decl., Exh. 2.)

8. The recipients of the March 15, 2002 letter were given forty-five days from the letter's date to respond. (Armentrout Decl., Exh. 2.)

9. In a letter dated April 10, 2002, to David Johnson of the California Nurses Association, Attorney General Bill Lockyer stated, "I have made the enforcement of AB 1889 a priority .... As Attorney General, I am strongly committed to seeing that this public policy is implemented." (North Decl., Exh. 2.)

10. On May 18, 2001, Bill Lockyer sent an accounting demand to AB Crispino and Company, Inc., demanding that it provide records to show that it was in compliance with AB 1889. (Armentrout Decl., Exh. 4.)

11. On May 23, 2001, the Service Employees International Union filed a lawsuit against AB Crispino Company, Inc. under AB 1889. (Armentrout Decl., Exh. 5.)

12. On May 18, 2001, Bill Lockyer sent an accounting demand to Fountain View, Inc., demanding that Fountain View, Inc. provide records to show that it was in compliance with AB 1889. (Armentrout Decl., Exh. 6.)

13. On November 19, 2001 Bill Lockyer filed a lawsuit against Fountain View, Inc. under AB 1889. (Armentrout, Decl., Exh. 7.)

14. On May 1, 2002, Bill Lockyer sent an accounting demand to Palomar Pomerado Health, demanding that Palomar Pomerado Health provide records to show that it was in compliance with AB 1889. (Sponseller Decl., Exh. 1.)

15. AB Crispino and Company, Inc., Fountainview, Inc., and Palomar Pomerado Health

each receive over $10,000 per calendar year as a result of participation in the state's Medi-Cal program. (Armentrout Decl., Exhs. 4 and 6; Sponseller Decl., Exh. 1.)

II. CONCLUSIONS OF LAW

Based on the foregoing, the Court now makes the following legal conclusions. To the extent these conclusions of law are deemed to be statements of uncontroverted facts, they should be understood as incorporated in Section I above as though set forth fully therein.

1. This Court has subject matter jurisdiction to adjudicate this controversy pursuant to 28 U.S.C. §§ 1331 and 1367(a).

2. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b).

3. Plaintiffs the Chamber of Commerce of the United States, California Chamber of Commerce, Employers Group, California Healthcare Association, California Manufacturers and Technology Association, California Association of Health Facilities, and California Association of Homes & Services for the Aging (collectively "Association Plaintiffs") have organizational standing pursuant to *Friends of the Earth v. Laidlaw Environmental Services,* 120 S. Ct. 693, 704 (2000), because each association has at least one member employer which has standing in its own right to present the claims asserted herein. Members of Association Plaintiffs have faced, are currently facing and/or will likely face union organizing and/or decertification activities. Further, the interests sought to be protected, are germane to the associations' purposes, and neither

the claims asserted nor the relief requested requires that the members participate individually in the suit.

4. Under AB 1889, State contractors and recipients of State funds are prohibited from incurring costs "to assist, promote or deter union organizing", unless they establish accounting procedures to document the segregation of funds so that no State funds contribute to the prohibited activity. Cal. Gov't Code §§ 6645.1(a)-(b), 16645.2(a)-(b).

5. State contractors and recipients of State funds are required to provide proof of such accounting upon request by the Attorney General, Cal. Gov't Code §§ 16645.1(b), 16645.2(c).

6. Violators are assessed treble damages – the amount allegedly improperly expended, plus a civil penalty of double that amount. See Cal. Gov't Code §§ 16645.1(c), 16645.2(d).

7. State contractors may not assist, promote, or deter union organizing by employees who are performing work on a service contract for the State or State agency, regardless of whether the employer does so with private sources. *See* Cal. Gov't Code § 16645.3(a). Penalties are assessed at $1,000 per employee per violation. § 16645.3(b).

8. An employer who conducts business on state property under a contract or lease may not used that property to hold a meeting with any employees or super visors if the purpose is to "assist, promote, or deter union organizing. Cal. Gov't Code § 16645.5(a). Violators are assessed a civil penalty of $1,000 per employee per meeting. *See* Cal. Gov't Code § 16645.5(b).

9. AB 1889 prohibits "legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning, or coordination of, or carrying out, an activity to assist, promote, or deter union organizing." *See* Cal. Gov't Code § 16646(a).

10. AB 1889 prohibits private employers receiving state funds in excess of ten-thousand dollars ($10,000) in one year from using such funds to assist, promote or deter union organizing. *See* Cal. Gov't Code § 16645.7(a). Prior to participating in the state program, the employer must certify it will comply with the prohibition. *See* Cal. Gov't Code 16645.7(b). Violators must return the expended funds and will be fined a civil penalty up to twice the amount of the funds expended. *See* Cal. Gov't Code § 16645.7(d).

11. AB 1889 can be enforced by the State Attorney General or by taxpayers. See Cal. Gov't Code § 16645.8(a).

12. AB 1889 purports to regulate employer speech protected by Section 8(c) of the National Labor Relations Act ("NLRA"). Thus, AB 1889 is preempted under 29 U.S.C. 158(c) pursuant to *San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236, 79 S. Ct. 773, 3 L. Ed. 2d 775 (1959), because Congress intended state laws and causes of action to be preempted when they seek to regulate activity that is even arguably protected or prohibited by Sections 7 and 8 of the NLRA. AB 1889 is also preempted under 29 U.S.C. 158(c) pursuant to *International Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n,* 417 U.S. 132, 96 S. Ct. 2548, 49 L. Ed. 2d 396 (1976), because Congress

intended employer speech rights protected under Section 8(c) of the NLRA to be unregulated.

13. AB 1889 attempts to regulate record-keeping and cost reporting of Medi-Cal providers. However, the Labor Management Relations and Reporting Act ("LMRDA"), 29 U.S.C. §§ 401-531, comprehensively regulates the reports that employers, labor relations consultants, labor organizations, and officers and employees of labor organizations must make to the public regarding labor relations issues. Therefore, AB 1889 is preempted under the LMRDA.

14. The Medicare and Medicaid Act, 42 U.S.C. § 1395 *et. seq.*, also preempt AB 1889. AB 1889 attempts to regulate Medi-Cal provider cost reporting, reimbursement, and record-keeping, as well as extend judicial review of such procedures. However, the Medicare Act "so comprehensively occupies the field of Medicare provider cost reporting and reimbursement that there remains no room for state action." *Congress of California Seniors v. Catholic Healthcare West,* 87 Cal. App. 4th 491, 509, 104 Cal. Rptr. 2d 655, 668 (2001). Moreover, "Medi-Cal cost reporting and reimbursement is inextricably tied to Medicare cost reporting, and [AB 1889 is] preempted for the same reasons." 87 Cal. App 4th 491, 510, 104 Cal. Rptr. 2d at 669.

15. AB 1889 goes well beyond merely expressing a legislative choice not to fund employers' speech concerning union organization or a particular project because it flatly prohibits employees, including supervisors, from discussing unions while on the clock even during paid rest breaks or working lunches. Thus, AB 1889 violates the First

Amendment of the United States Constitution and Article I, Section 2(a) of the California Constitution because "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consol. Edison Co. v. Pub. Serv. Comm'n of N. Y.*, 447 U.S. 530, 537, 100 S. Ct. 2326, 2333, 65 L.Ed.2d 319 (1980). AB 1889 is unconstitutional because it violates the First Amendment of the United States Constitution and Article I, Section 2(a) of the California Constitution.

16. AB 1889 allows state property and state funds to be used for expression and other activities favoring unionization (by unions and by employers willing to extend recognition to unions without elections), while burdening expression by employers questioning the merits of unionization. Therefore, AB 1889 constitutes invidious viewpoint discrimination which the government may not engage in because "the principle of viewpoint neutrality ... underlies the First Amendment." *Bose Corp. v. Consumers Union of United States,* 466 U.S. 485, 505, 104 S. Ct. 1949, 1962, 80 L. Ed. 2d 502 (1989).

17. AB 1889 constitutes a prior restraint on employer and employee speech and thus violates the First Amendment. *See Nebraska Press Ass'n v. Stuart,* 427 U.S. 539, 96 S. Ct. 2791, 49 L. Ed. 2d 683 (1976).

18. AB 1889 also violates the First Amendment because it is void for vagueness and "raises special First Amendment concerns because of its obvious chilling effect on free speech." *Reno v.*

ACLU, 521 U.S. 84.4, 871-872, 117 S. Ct. 2329, 2345, 138 L. FA. 2d 874 (1997). AB 1889 is unconstitutionally vague because it is unlikely that most employers will understand precisely what is prohibited by it.

19. Whenever a law impacts equivalent entities differently, in such a way as to "burden[] a fundamental right," strict scrutiny analysis is appropriate. *Romer v. Evans,* 517 U.S. 620, 631, 116 S. Ct. 1620, 1627, 134 L. Ed.2d 855 (1996). AB 1889 plainly violates a fundamental right, namely an employers' First Amendment protected interest in being able to express its views to employees regarding unionization. As such, AB 1889 should be subject to strict scrutiny and found to be invalid under the Equal Protection clause because it reflects an invidious method of silencing one side of the debate in order to allow the other side to proceed unchecked.

20. AB 1889 denies state contractors, fund recipients, program participants and lessees the right to consult with and be represented by legal counsel and thus violates the Due Process Clause guarantees of the Fourteenth Amendment of the United States Constitution because the right to choose, consult with and be represented by one's counsel are fundamental rights guaranteed under the Due Process Clause. *See Prudential Ins. Co, v. Small Claims Court,* 76 Cal, App. 2d 379, 382, 173 P.2d 38 (1946).

* * * * *

Dated: May 24, 2002

By /s/
Stephen P. Pepe
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

Case No. SACVO2377GLT(ANx)

The Chamber of Commerce of the United States, *et al.*

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bonta R.N., Dr., P.H. as the Director of the California Department of Health Services and DOES 1 through 10,

Defendants,

and

American Federation of Labor and Congress of Industrial Organizations and California Labor Federal, AFL-CIO,

Intervenors.

JUDGMENT PURSUANT TO F.R.C.P. 54(b)

On September 16, 2002, the Court entered an Order Granting Plaintiffs' Motion for Summary Judgment in Part, which finds that California Government Code sections 16645.2 and 16645.7 are preempted by the National Labor Relations Act. The parties have requested that a partial final judgment be entered pursuant to FRCP 54(b), and the Court finds that there is no just reason for delay. Accordingly, judgment is hereby entered as follows:

1. California Government Code sections 16645.2 and 16645.7 are hereby declared to be invalid as applied to employers covered by the National Labor Relations Act. The Court finds sections 16645.2 and 16645.7 to be preempted by the National Labor Relations Act and thus invalid under the Supremacy Clause.

2. Defendants and Intervenors, as well as their agents, servants, and employees and those persons in active concert or participation with them who receive actual notice of this Order, are hereby enjoined and restrained from taking any actions to enforce California Government Code sections 16645.2 and 16645.7 on behalf of the people of the State of California against any employer covered by the National Labor Relations Act.

Dated: Jan. 3, 2003

/s/
GARY L. TAYLOR
Judge of the United States District Court, Central District of California

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

Case No. SACVO2377GLT(ANx)

The Chamber of Commerce of the United States, *et al.*

Plaintiffs,

v.

Bill Lockyer in his capacity as Attorney General of the State of California, The Department of Health Services, Frank G. Vanacore as the Chief of the Audit Review and Analysis Section of the California Department of Health Services, and Diana M. Bonta R.N., Dr., P.H. as the Director of the California Department of Health Services and DOES 1 through 10,

Defendants,

and

American Federation of Labor and Congress of Industrial Organizations and California Labor Federal, AFL-CIO,

Intervenors.

* * * * *

pursuant to California Government Code section 16645.8. The parties further stipulate that this action shall be deemed "first in time" to any subsequently threatened enforcement action against any Plaintiff or any member of a Plaintiff association, thus precluding abstention under Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971).

5. The parties understand and agree this Stipulation is intended to streamline the challenge to California Assembly Bill 1889 and to facilitate a substantive ruling by the appellate court on whether California Government Code sections 16645.2 and 16645.7 are preempted by the National Labor Relations Act, thereby providing guidance for challenges to the remainder of the statute. Accordingly, the parties agree they will not raise any other issues on appeal, including but not limited to, standing, venue, abstention under Younger v. Harris, 401 U.S. 37, 91 S.Ct 746 (1971) or Railroad Commission of Texas v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643 (1941), LMRDA, MediCal or MediCaid preemption or violation of the First Amendment provided however nothing herein shall preclude the parties from arguing First Amendment principles

and case law solely as they relate to the impact or effect on the National Labor Relations Act preemption doctrine.

6. The parties recognize the stipulations contained herein are contingent on: (1) this Court granting Defendants' and Intervenors' Motions for Reconsideration, as specified in Paragraph 1 above; (2) this Court's entry of Judgment under Federal Rule of Civil Procedure 54(b), granting in part Plaintiffs' Motion for Summary Judgment as specified in Paragraphs 2 and 3 above; and (3) this Court granting a stay of the remaining portions of the instant action under the terms set forth in Paragraph 4 above.

* * * * *

Nos. 03-55166 and 03-55169

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CHAMBER OF COMMERCE OF UNITED STATES, *et al.*,

Plaintiffs-Appellees,

v.

BILL LOCKYER, in his capacity as Attorney General of the State of California, *et al.*,

Defendants-Appellees,

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS *et al.*

Intervenors-Appellants.

DECLARATION OF SUZANNE M. AMBROSE IN SUPPORT OF DEFENDANTS-APPELLANTS' REQUEST FOR JUDICIAL NOTICE

I, SUZANNE M. AMBROSE, declare:

1. I am an attorney at law admitted to practice before the bar of this Court. I am a Supervising Deputy Attorney General in the Office of the Attorney General of California, in Sacramento, California, and I am the attorney of record for Bill Lockyer, the Attorney General of California, in this

action.

2. Attached hereto as Exhibit A is a true and correct copy of a letter from Chief Assistant Attorney General Richard M. Frank to David M. Johnson, Southern California Director of California Nurses Association ("CNN"), dated July 16, 2002.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on June 19, 2003, in Sacramento, California.

SUZANNE M. AMBROSE

Supervising Deputy Attorney General

Attorneys for Defendants-Appellants

July 16, 2002

David M. Johnson
Southern California Director
California Nurses Association
425 West Broadway, Suite 111
Glendale, CA 91204

RE: Palomar Pomerado Health System

Dear Mr. Johnson:

Thank you for your letter to Attorney General Lockyer, dated June 24, 2002. The Attorney General has asked that I respond on his behalf.

You advise the Attorney General that the California Nurses Association (CNA) and the employer that was the subject of an AB 1889 notice that you lodged with this office earlier this year, Palomar Pomerado Health System (Palomar Pomerado), have resolved their differences. For that reason, you inform the Attorney General that you are withdrawing and dismissing that notice with prejudice, and you urge him to take no further action against this employer.

We are pleased to learn that CNA and Palomar Pomerado have, by working together, resolved their differences in a manner that is satisfactory to all concerned. However, I must inform you that neither withdrawal or dismissal of an AB 1889 notice, nor a request that the Attorney General take no further action against the employer that is the subject of such a notice, necessarily justifies closure of any inquiry that the Attorney General may have undertaken in response to that notice.

Each AB 1889 notice that is received by the Attorney General is evaluated to determine what action, if any, the Attorney General might take. Such review is objective and the facts and circumstances of each case are carefully evaluated. Moreover, any number of factors may be considered in determining how far an inquiry may proceed, which may include the filing of a civil action under Government Code section 16645 et seq.

Respectfully, whether we take any further action in the Palomar Pomerado matter will be determined by taking into account any and all matters and factors that we may believe are relevant. Lastly, our decision to decline automatically to conclude our review regarding Palomar Pomerado should not be construed to suggest that we have made a decision to take any particular action against that employer. I hope that you will understand the reasons why we cannot provide you with any assurance respecting what action, if any, we might take with respect to the subject notice.

Again, thank you for your letter, and we congratulate both CNA and Palomar Pomerado for working collaboratively to resolve their differences.

Sincerely,

/s/

RICHARD M. FRANK
Chief Assistant Attorney General

FOR BILL LOCKYER
ATTORNEY GENERAL